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No. 15143 ✓

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

OLAA SUGAR COMPANY, LIMITED and
ILWU LOCAL 142, Respondents.

Transcript of Record

Petition for Enforcement of an Order of the National Labor
Relations Board

FILED

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PAUL P. O'BRIEN, CLERK

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Petition for Enforcement of an Order of the National Labor
Relations Board

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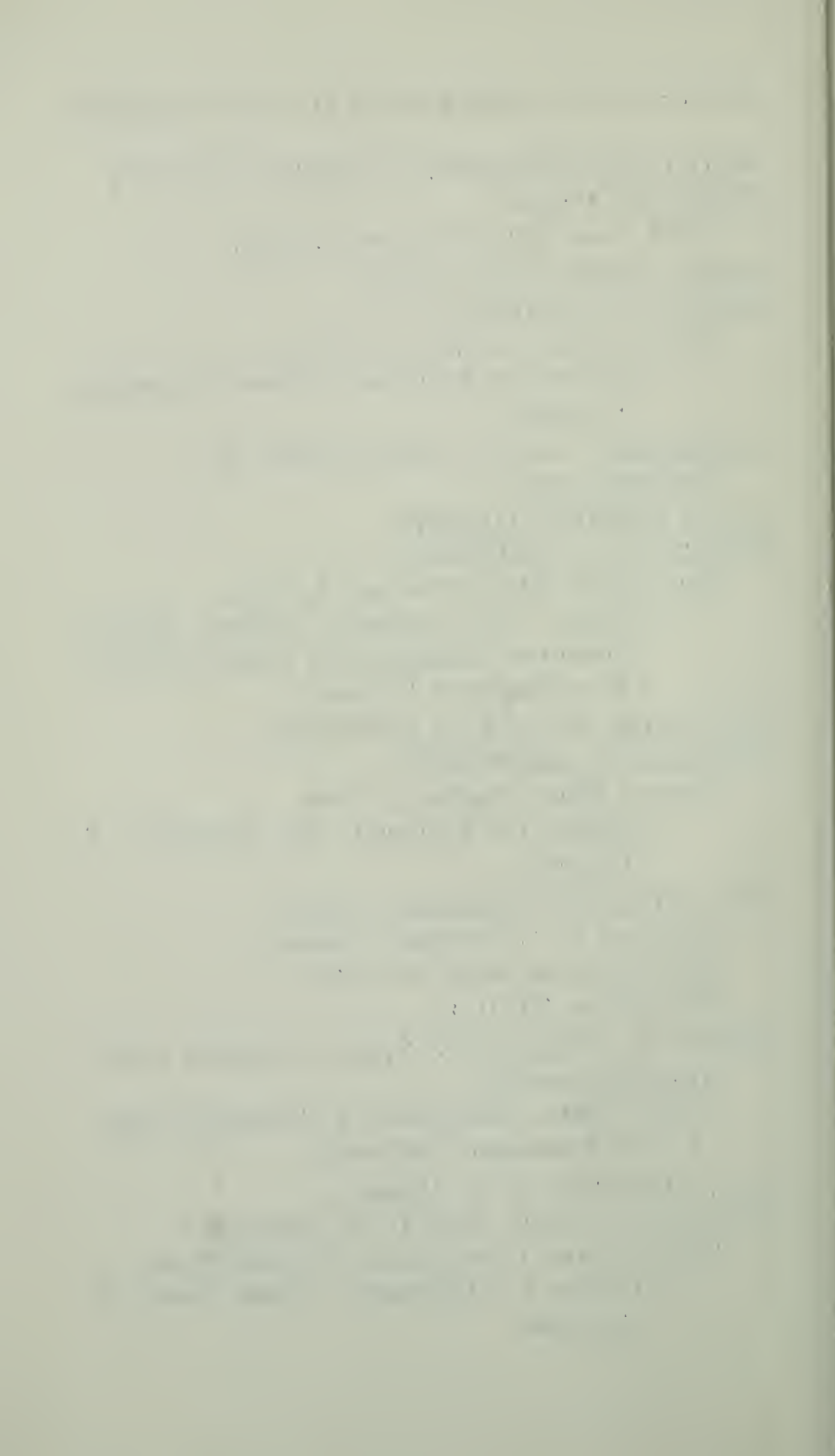
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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GENERAL COUNSEL'S EXHIBIT No. 1

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Case No. 37-CA-84. Date Filed: January 6, 1954.
Compliance Status Checked By: wkt.

1. Employer Against Whom Charge Is Brought:

Name of Employer: Olaa Sugar Company, Limited.

Address of Establishment: Olaa, Hawaii.

Nature of Employer's Business: Sugar Plantation.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a), Subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge:

8 (a) (3)

On or about December 17, 1953, the above-named Company through its Manager, C. E. S. Burns, Jr., discharged an employee, Favorito P. Banez, on demand of United Sugar Workers, ILWU Local 142, Unit 3, from which organization the aforesaid Favorita P. Banez was expelled because of his opposition to the union shop demand of the above-named Union. Furthermore, the aforesaid Company and

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the aforesaid Union have not signed a bona fide union shop contract which might justify discharge for failure to pay union dues to the Union.

8 (a) (1)

By these and other acts the above-named Company has interfered with, restrained and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act as amended.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: Favorito P. Banez.

4. Address: P. O. Box 332, Olaa, Hawaii.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit: —

* * * * *

7. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By FAVORITO P. BANEZ

Jan. 6, 1954.

Affidavit of Service by Mail and Postal Return Receipts attached.

GENERAL COUNSEL'S EXHIBIT No. 3

United States of America
National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS

Case No. 37-CB-6. Date Filed: January 6, 1954.
Compliance Status Checked By: wkt.

1. Labor Organization or its Agents Against
Which Charge Is Brought:

Name: United Sugar Workers, ILWU Local
142, Unit 3.

Address: Olaa, Hawaii.

The above-named labor organization or its agents
has engaged in and is engaging in unfair labor
practices within the meaning of Section (8b) Sub-
sections (1) and 2) of the National Labor Relations
Act, and these unfair labor practices are unfair la-
bor practices affecting commerce within the mean-
ing of the Act.

2. Basis of the Charge:

8 (b) (2)

The above-named labor organization caused the
Olaa Sugar Company, Limited, through C. E. S.
Burns, Jr., Manager, on or about December 17,
1953 to discharge Favorito P. Banez for reasons
other than refusal to tender periodic dues and ini-
tiation fees. Furthermore, the aforesaid Company
and the aforesaid Union have not signed a bona fide

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union shop contract which might justify discharge for failure to pay union dues to the Union.

8 (b) (1)

By these and other acts and conduct, the aforesaid labor organization has interfered with, restrained and coerced employees of the Employer in the exercise of their rights as guaranteed in Section 7 of the Amended Act.

3. Name of Employer: Olaa Sugar Company, Limited.

4. Location of Plant: Olaa, Hawaii.

5. Type of Establishment: Sugar Plantation.

6. Identify Principal Product or Service: Sugar.

* * * * *

8. Full Name of Party Filing Charge: Favorito P. Banez.

9. Address of Party Filing Charge: P. O. Box 332, Olaa, Hawaii.

* * * * *

11. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By FAVORITO P. BANEZ

Jan. 6, 1954.

Affidavit of Service by Mail and Postal Return Receipts attached.

GENERAL COUNSEL'S EXHIBIT No. 7

United States of America

Before the

National Labor Relations Board

Twentieth Region

Case No. 37-CA-84

In the Matter of

OLAA SUGAR COMPANY, LIMITED,

and

FAVORITO P. BANEZ, AN INDIVIDUAL

Case No. 37-CB-6

In the Matter of

ILWU LOCAL 142

and

FAVORITO P. BANEZ, AN INDIVIDUAL

CONSOLIDATED COMPLAINT

It having been charged by Favorito P. Banez, an individual, that Olaa Sugar Company, Limited, and ILWU Local 142, have engaged in, and are engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C.A. 141, et seq., (Supp. July 1947), herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, designated by Rules and Regulations of the National

Labor Relations Board, Series 6, as amended, Section 102.15, hereby issues this Complaint upon the charges duly consolidated pursuant to the provisions of Section 102.33(b) of the above Rules and Regulations, and alleges as follows:

I.

Olaa Sugar Company, Limited, herein called the Respondent Employer, a Hawaiian corporation with its principal office and place of business at Olaa, Territory of Hawaii, is engaged in the growing and processing of sugar cane. During the calendar year 1953, the Respondent Employer produced raw sugar and molasses at its place of business located at Olaa, valued in excess of \$2,000,000, substantially all of which was shipped to the mainland of the United States for refining. During the calendar year 1953, the value of supplies and equipment purchased by the Respondent Employer for use at its place of business located at Olaa, Island of Hawaii, and shipped to its said place of business from points outside the Territory of Hawaii exceeded \$500,000.

II.

ILWU Local 142, herein called the Respondent Union, is a labor organization within the meaning of Section 2(5) of the Act.

III.

On or about October 29, 1952, the Respondent Employer and the Respondent Union executed and became parties to a collective bargaining agree-

ment, the terms of which were in full force and effect at all times material herein. Said collective bargaining contract contained, among other matters, the following provisions:

Any claim by the Union that action on the job of a non-union employee covered by this agreement is disrupting harmonious working relations may be taken up as a grievance. Repeated disruptions of harmonious working relations shall be grounds for discipline or discharge.

IV.

On or about December 17, 1953, the Respondent Union attempted to cause, and did cause, the Respondent Employer to discharge Favorito P. Banez as an employee pursuant to the provisions of the collective bargaining agreement, as set forth in paragraph III, above.

V.

On or about December 17, 1953, the Respondent Employer discharged Favorito P. Banez, an employee, at the request and upon the demand of the Respondent Union, pursuant to the provisions of the collective bargaining agreement, as set forth in paragraph III, above.

VI.

By reason of the provisions of the collective bargaining agreement of October 29, 1952, as set forth in paragraph III, above, and by reason of the acts set forth in paragraph IV, above, and by each of

said acts, the Respondent Union did cause, and is causing, the Respondent Employer to discriminate against Favorito P. Banez, an employee, in violation of Section 8 (a) (3) of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

VII.

By the acts set forth in paragraphs III and IV, above, and by each of said acts, the Respondent Union did restrain and coerce, and is restraining and coercing, the employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

VIII.

By reason of the provisions of the collective bargaining agreement of October 29, 1952, as set forth in paragraph III, above, and by reason of the acts set forth in paragraph V, above, and by each of said acts, the Respondent Employer did discriminate, and is discriminating, in regard to hire, tenure, terms and conditions of employment of Favorito P. Banez, an employee, thereby encouraging membership in the Respondent Union and discouraging membership in other labor organizations, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

IX.

By the acts set forth in paragraphs III and V, above, and by each of said acts, the Respondent Employer did interfere with, restrain, and coerce, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

X.

The acts of the Respondent Employer and the Respondent Union, as set forth in Paragraphs III, IV, and V, above, occurring in connection with the operations of the Respondent Employer described in paragraph I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States of the United States, and within the Territory of Hawaii, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XI.

The aforesaid acts of the Respondent Employer as set forth in paragraphs III and V, above, and the aforesaid acts and conduct of said Respondent Union, as set forth in paragraphs III and IV, above, and each of said acts, constitute unfair labor practices within the meaning of Section 8 (a) (1) and (3), Section 8 (b) (1) (A), Section 8 (b) (2), and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 13th day of July, 1954, issues this Consolidated Complaint against Olaa Sugar Company, Limited, and ILWU Local 142, the Respondents named herein.

[Seal] /s/ GERALD A. BROWN,
Regional Director, National Labor Relations Board,
Twentieth Region.

Affidavit of Service by Mail and Postal Return Receipts attached.

GENERAL COUNSEL'S EXHIBIT No. 10
[Title of Board and Cause.]

MOTION TO DISMISS FOR LACK
OF JURISDICTION

Comes now Respondent ILWU Local 142 and moves the dismissal of the Consolidated Complaint herein on the following grounds:

I.

The National Labor Relations Board is without jurisdiction of the subject-matter herein in that the charging party, Favorito P. Banez, at the time of the acts charged was not an employee as defined in § 2 (3) of the Act (29 USCA § 152 (3)) by virtue of his being an agricultural laborer.

II.

The National Labor Relations Board is forbidden by law to use funds for investigating or hearing the subject-matter herein, by virtue of the National Labor Relations Board Appropriation Act, 1953 (Title III, Act of July 31, 1953, Pub. L. 170, 83d. Congress, 1st Session) which prohibits Board funds from being used with respect to bargaining units composed of agricultural laborers, as defined in Section 2 (3) of the Act and as defined in Section 3 (f) of the Fair Labor Standards Act (29 USCA § 203 (f)).

ANSWER

By way of answer to the Consolidated Complaint herein, Respondent ILWU Local 142 shows as follows:

I.

Respondent Union is without knowledge as to the allegations contained in Paragraph I of the complaint and therefore leaves complainant to its proof thereon.

II.

With respect to the allegation contained in Paragraph II, Respondent Union states that it is a labor organization representing some employees covered under the provisions of the Act and other employees who are not so covered.

III.

Respondent Union admits the allegations contained in Paragraph III.

IV.

Respondent Union denies the allegations contained in Paragraph IV and states that Respondent Union took up the matter of the conduct of Favorito P. Banez with the Respondent Employer as a grievance under the provisions of the collective bargaining agreement.

V.

Respondent Union denies the allegations in Paragraph V and states that after having raised the grievance as set forth with the Respondent Employer, Respondent Union was informed by the Employer that the grievance was substantiated and Favorito P. Banez would be discharged.

VI.

Respondent Union denies the allegations set forth in Paragraph VI.

VII.

Respondent Union denies the allegations set forth in Paragraph VII.

VIII.

Respondent Union denies the allegations set forth in Paragraph VIII.

IX.

Respondent Union denies the allegations set forth in Paragraph IX.

X.

Respondent Union denies the allegations set forth in Paragraph X.

XI.

Respondent Union denies the allegations set forth in Paragraph XI.

Wherefore, Respondent Union prays that the complaint herein be dismissed.

Dated: Honolulu, T. H., this 22nd day of July, 1954.

ILWU LOCAL 142,
/s/ By ANTONIO RANIA,
Its President.

Duly Verified.

GENERAL COUNSEL'S EXHIBIT No. 11

[Title of Board and Cause.]

ANSWER OF OLAA SUGAR COMPANY,
LIMITED

Comes now Respondent, Olaa Sugar Company, Limited, and for answer to the complaint, alleges:

I.

The allegations of paragraph numbered I are admitted.

II.

The Respondent neither admits nor denies the allegations of Paragraph No. II of the complaint and demands strict proof thereof.

III.

The Respondent admits the allegations of Paragraph No. III of the complaint.

IV.

The Respondent denies the allegations of Paragraph No. IV of the complaint.

V.

Respondent denies the allegations of Paragraph No. V of the complaint.

VI.

Respondent denies the allegations of Paragraph No. VI of the complaint.

VII.

Respondent denies the allegations of Paragraph No. VII of the complaint.

VIII.

Respondent denies the allegations of Paragraph No. VIII of the complaint.

IX.

Respondent denies the allegations of Paragraph No. IX of the complaint.

X.

Respondent denies the allegations of Paragraph No. X of the complaint.

XI.

Respondent denies the allegations of Paragraph No. XI of the complaint.

Further answering the complaint, the Respond-

ent, Olaa Sugar Company, Limited, alleges Favorito P. Banez, the charging individual, was discharged with cause and without discrimination. Respondent is informed and believes and upon the basis of that information alleges that the charging individual engaged in a course of conduct intended to and with the result of disrupting harmonious working relations of the employees of the Company, and accordingly was discharged by the Employer.

OLAA SUGAR COMPANY,
LIMITED,

/s/ By J. E. EDNIE,
Its Vice-President.

Duly Verified.

GENERAL COUNSEL'S EXHIBIT No. 13

[Title of Board and Cause.]

MOTION TO DISMISS FOR LACK OF
JURISDICTION

Comes now Olaa Sugar Company, Limited, Respondent in the above entitled consolidated action, by its attorneys, Smith, Wild, Beebe & Cades, and moves the dismissal of the consolidated complaint filed herein for the following reasons:

I.

The National Labor Relations Board has no jurisdiction of the subject matter for the reason that

the charging employee during the times complained of was not an employee as defined in Section 2 (3) of the National Labor Relations Act as amended (29 U.S.C. Sec. 152 (3)) but was during such times and by virtue of his employment an agricultural laborer.

II.

That by virtue of the limitations placed upon the National Labor Relations Board by the Congress of the United States in appropriating funds for the operation thereof, the National Labor Relations Board has no authority in law to conduct a hearing involving an agricultural laborer as the same is defined in Section 2 (3) of the National Labor Relations Act as amended, and as defined in Section 3 (f) of the Fair Labor Standards Act (29 U.S.C. Sec. 203 (f)).

Wherefore, Respondent, Olaa Sugar Company, Limited, respectfully prays that the complaint filed herein be dismissed for lack of jurisdiction.

OLAA SUGAR COMPANY,
LIMITED,

By SMITH, WILD, BEEBE &
CADES,
Its Attorneys,

/s/ By J. EDWARD COLLINS.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

David Karasick, Esq., for the General Counsel; Edward J. Collins, Esq., of Smith, Wild, Beebe and Cades, of Honolulu, T. H., for Olaa Sugar Company, Limited, Respondent Employer; James A. King, Esq., of Bouslog and Symonds, of Honolulu, T. H., for ILWU Local 142, Respondent Union.

Before: David F. Doyle, Trial Examiner.

Statement of the Case

This proceeding brought under Section 10 (b) of the National Labor Relations Act, as amended, herein called the Act, was heard at Hilo, Territory of Hawaii, on August 23-25, 1954, pursuant to due notice to all parties. The consolidated complaint dated July 13, 1954, issued by the General Counsel of the National Labor Relations Board and duly served on the Respondents, was based on charges duly filed by Favorito P. Banez, the charging party. It alleged in substance that: (1) the Union and the Employer, on or about October 29, 1952, executed a collective bargaining agreement which contained an unlawful discriminatory provision, and (2) on December 17, 1953, the Union caused the Employer to discharge Banez from his employment pursuant to the said discriminatory provision, and that thereby the Union had committed unfair labor practices

within the meaning of Section 8 (b) (1) (A) and 8 (b) (2), and the Employer had committed unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act, as amended.

The Union, in its duly filed answer, admitted that: (1) it was a labor organization, representing both "employees," as defined in the Act, and other workers who were not covered by the same definition; and (2) on October 29, 1952, the Employer and the Union had executed a contract containing a provision which shall be hereafter set forth, and denied the commission of any unfair labor practices. The answer of the Union also stated that the Union lawfully presented to the Employer a grievance, based on the conduct of Banez, under the provisions of the collective bargaining agreement, and that thereafter the Employer notified the Union that the merits of the grievance had been substantiated, and that thereafter Banez was discharged. It was also the position of the Union, as stated at the hearing, that the alleged discriminatory provision of the contract was not discriminatory or unlawful.

The Employer in its duly filed answer admitted: (1) certain allegations of the complaint setting forth facts of its business operations, and (2) that the Employer and the Union had executed the collective bargaining agreement containing the particular provision above referred to, and denied the commission of any unfair labor practices. The answer of the Employer also alleged, as an affirmative defense, that Banez was discharged without dis-

crimination and for cause, because he engaged in a course of conduct intended to, and resulting in, the disrupting of the harmonious working relations of the employees and the Company, "and that based upon such conduct, considered in the light of the work record of the complainant, and the effect of such conduct upon the operations of the Respondent, the complainant was discharged by the Employer." ¹

All parties were represented at the hearing, were afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue the issues orally upon the record, and to file briefs and proposed findings. Brief oral arguments were presented by counsel and all waived the filing of briefs.

Motion to Dismiss

At the opening of the hearing, and at the close thereof, both the Employer and the Union moved to dismiss the complaint on the ground that the Board was without jurisdiction of the subject matter, or the persons involved, because (1) the charging party, Banez, at the time of the acts alleged in the complaint, was not an "employee," as defined in the Act, being an agricultural laborer, and (2) the Board was forbidden to use funds for investigating or hearing the subject matter, by the terms of the

¹ The answer of the Employer was amended at the hearing to include the quoted allegation.

Board's Appropriation Acts.² The motions are based on the following sequence of legislative enactments.

Section 2 (3) of the National Labor Relations Act excluded from the definition of the term employee, "any individual employed as an agricultural laborer." Annually since 1946 Congress has added a rider to the appropriation for the Board, providing that no part of the appropriation, "shall be * * * used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in * * * Section 3 (f)" of the Fair Labor Standards Act (29 U.S.C.A. 203 (f)). The last mentioned section, so far as here pertinent, reads as follows:

* * * "agriculture" includes farming in all its branches and among other things includes . . . the production, cultivation, growing and harvesting of any agricultural . . . commodities . . . and any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market delivery to storage or to market or to carriers for transportation to market.

When the motion was made at the opening of the hearing it was denied, with leave to renew, on the ground that, at that time, there was no factual basis for the motion. The Trial Examiner suggested that

² National Labor Relations Board Appropriation Act, 1954 (Title III, Act of July 31, 1953, Pub. L. 170, 83d Congress, 1st Session) and National Labor Relations Board Appropriation Act, 1955 (Title III, Act of July 2, 1954, Pub. L. 472, 83rd Congress, 2d Session).

counsel present evidence on both the issue raised by the motions, and the issues raised by the pleadings, thus affording the Board an opportunity of making a final disposition of all issues in the one proceeding. This suggestion was accepted by counsel, and thereafter evidence was presented and received on the issue raised by the motions, and those raised by the pleadings. At the close of the evidence, the Union and the Employer each renewed its motion to dismiss on the grounds previously stated. The Trial Examiner reserved ruling, stating that he would dispose of the motion in the course of his Intermediate Report, after an examination and consideration of the authorities, submitted by counsel, in the course of their argument. The motion is hereinafter denied.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The labor organization

Upon the pleadings, the evidence as a whole, and the Board's Decision and Direction of Election in the proceeding entitled Matter of Pepeekeo Sugar Company, et al., and International Longshoremen's and Warehousemen's Union, Local 142, et al., 59 NLRB 1532, dated January 12, 1945, of which I take judicial notice, I find that ILWU, Local 142, is a labor organization within the meaning of Section 2 (5) of the Act.

At the hearing it was stipulated by the parties,

that as a result of the above-named proceeding, in which both the instant Union and the instant Employer were parties, the Union on March 22, 1945, was certified by the Board as the collective bargaining representative of certain of the "employees" of the Employer, and that since that date the Union and the Employer have engaged in collective bargaining, and have been in contractual relationship with respect to various employees and workers of the Company at its operations located at Olaa, Island of Hawaii, T. H.

However, it is clear that for some time past the Union, in addition to representing "employees," has also represented "agricultural" workers employed by the Company. The General Counsel introduced into evidence the current labor agreement between the parties, which was effective September 1, 1951, and amended October 29, 1952.³ Section 3 of this contract, entitled "Employee Coverage," states that the employees covered by the agreement are: "All production, maintenance and agricultural employees of the Company with the exception" of workers in certain categories specifically excluded. The section then sets forth four units of employees represented by the Union. It should be noted that Unit 3 brings within the operation of the contract some agricultural workers, whose positions had been considered by the Board in the Pepeekeo Sugar case, *supra*, and had been specifically excluded from the certification granted to the Union, on the ground

³ General Counsel Exhibit No. 14.

that they were agricultural workers. The Board found that the employees of the sugar companies engaged in the following operations, in addition to certain dairy workers, were agricultural laborers within the meaning of the Act:

(1) Preparation of the land for planting, cultivating, fertilizing, irrigating, harvesting, including the loading by hand or by crane of the cut cane onto the initial means of transporting the cane from the fields, and the care of animals.

The contract, by its terms, covers these agricultural workers in nearly identical language. Section 3 (c) reads as follows:

Unit 3. Those agricultural employees of the Company who are engaged in clearing and preparation of land, preparation and transportation of seed, planting, cultivating, irrigating, fertilizing, spraying with herbicides and insecticides, harvesting, including the loading of the agricultural products onto the initial means of transporting them from the fields, and the care of animals used in cultivating and harvesting; and also employees in ranch and dairy operations, except employees in the milk room on dairy ranches and employees engaged in milk delivery * * *

The contract, by its terms, also covers a category of employees whose employment was found by the Board to be within the definition of employee, although they spent part of their time in agricultural pursuits.

It should also be noted that in the Papeekeeo decision, *supra*, workers engaged in transportation were

found to be "employees" within the definition of the Act. Banez, the complainant herein, at the time of his discharge was, and for some time prior thereto, had been a senior cane truck driver, so there is no question of his personal status as an "employee" under the Act, unless his status within a group has been changed by virtue of the Appropriation Acts, as contended by the Respondents.

The fact that a union undertakes to represent both employees and agricultural workers does not place the union outside the operation of the Act.⁴

II. The business operations of the Employer. Evidence relating to the motion to dismiss.

It was stipulated by counsel that Olaa Sugar Company, Limited, is an Hawaiian corporation which is engaged in the growing and processing of sugar cane on the Island of Hawaii, Territory of Hawaii. The Company owns and cultivates 7,418 acres of cane fields on the Island of Hawaii, and also purchases sugar cane from a number of independent growers whose 6,911 acres of cane fields are also located on the Island of Hawaii. The Employer produces raw sugar and molasses annually in excess of a value of \$6,000,000, which is shipped to points outside the Territory of Hawaii from the Employer's sugar mill located at Olaa, Island of Hawaii.

The nature of the relationship between the Employer and the independent growers is established by a series of agreements introduced in evidence by

⁴ Di Giorgio Wine Company, 87 NLRB 720.

the General Counsel.⁵ These agreements are typical contracts of sale, by which the independent grower agrees to sell and the Employer agrees to buy the sugar cane grown by the grower on certain lands specified in the contract. The contracts contain provisions as to weight of sugar cane, basis of price, quality factor correction, rate of payment, accounting and settlement, etc. The sections of the various contracts which are of importance in the instant proceeding are those relating to the delivery of sugar cane, or the passing of title thereto. In the Independent Grower Agreement,⁶ it is stated that the mill (the Employer) "will take delivery of the crop or crops of sugar cane now growing or to be grown * * * cut and piled by the Grower (or cut and piled by the mill at his request and expense) on slings within 300 feet of a passable road * * * all at the time or times designated by the mill feasibly nearest to the time of maturity of said crop." The Temporary Amendment⁷ to the independent grower agreement, Section 2 thereof, states that "the mill (the Employer) will take delivery of the crop * * * now grown or to be grown during the term hereof, cut and piled by the grower on slings within 300 feet of a passable road * * * all at the time or times designated by the mill feasibly nearest to the time of maturity of said crop or crops." It further provides that, "should the mill undertake to perform the harvesting operations required of the grower, at

⁵ General Counsel Exhibit No. 17A, 17B, 17C, 17D.

⁶ General Counsel Exhibit No. 17A.

⁷ General Counsel Exhibit No. 17B.

the request of the said grower, then the mill shall have the right in its sole discretion to determine the method whereby the said operations shall be performed, either by hand cutting and piling as described herein * * * or alternatively by such mechanical methods as the mill may select * * * and delivery of said sugar cane shall be taken by the mill at the point of severance from the ground of the said crop or crops at time of harvest, and subsequent loading and transporting operations shall be performed by the mill at its expense by any methods compatible with the selected method of mechanical harvesting." This same document in Section 10 states that the grower will grow and care for the crop, planting or replanting, with only such varieties of sugar cane as the mill may approve, all in accordance with the methods of good husbandry as practiced in the surrounding area; and that the grower will cut and pile his crop on his land upon slings (to be furnished by the mill) in bundles of specified size within 300 feet of a passable road for delivery to the mill at the time or times scheduled by the mill.

The tenor of all the agreements is that the independent growers shall have exclusive control of the planting, cultivation and harvesting of their crop, and its delivery at a point within 300 feet of a roadway, where it can be picked up by the Employer. The gist of all the agreements appears to be, that when the grower has raised his crop, cut it, and placed it in bundles of specified sizes, upon the slings furnished by the employer, at a place within

300 feet of a passable roadway, he has fulfilled his contract, and at that time and place delivery of the sugar cane is deemed complete.

Caleb E. S. Burns, Jr., manager of the Employer, testified credibly, furnishing further details as to the operations of the Company. He testified that the sugar cane fields of the independent growers are contiguous to the sugar cane fields of the Company. There are 438 independent growers, who cultivate 6,911 acres, and who furnish sugar cane to the Company's mill located at Olaa. The same mill also processes the sugar cane from the Company's own acreage amounting to 7,418 acres.

Burns testified that the relationship of the growers to the Company dated back to the start of the Company in the early 1900's. At that time the Company encouraged its employees to grow sugar cane on the side as a means to aiding them to increase their own income, and also to give the Company more sugar cane for its milling and processing operations. The relationship between the growers and the Company changed during the years. During the period 1935 to about 1951, the growers who had a relationship with a sugar milling company, were classified as "adherent planters," a term used in the Sugar Act of those years. In early 1951, their status was changed from that of adherent planter to one of "independent grower." Under that change, the grower actually assumed more of the responsibilities of being an independent farmer, which is the relationship existing at the present time. Under the

terms of the Company's present agreement with each independent grower, the Company takes possession of the cane in the field. There are two types of contract, one mechanical, in which the Company takes possession of the cane at the moment the cane stalks are severed from the ground, and the hand harvesting contract in which the Company takes possession of the cane after it has been cut and piled in the field. During the period of the adherent planter relationship, one of the regulations of the Sugar Act prohibited a company from changing the ratio of administration, or company land, to that of adherent planters cane land; thus a sugar company was prohibited from increasing its area under cultivation to the exclusion or detriment of the adherent planters. The sugar companies were compelled to adhere to that arrangement, if they were to obtain benefit payments allowed under the terms of the Sugar Act. At the present time, under the independent status of the growers, the same rule does not apply, but the land which a company owns and leases to growers, cannot be taken back by the company and put into cultivation for the company's purposes, during the term of the company's lease with the independent grower. A harvesting schedule for both the company's fields and the independent growers' fields is formulated each year by the company on the basis of age of crop. The company attempts to keep its age of harvest at about 24 months, so fields that were harvested in 1951 in a particular order will probably be harvested again in 1953 in the same order. This scheduling, based on

the age of crop, applies alike to the fields of both independent growers and the company.

In 1953 the Company was engaged in hand harvesting exclusively. In that operation the cane is cut by hand by workers and gathered into piles of specified sizes, on cable slings. Each pile weighs approximately $1\frac{1}{4}$ ton. When the slings are hooked together the pile becomes a bundle, which is then lifted from the ground by a traveling crane, and loaded into trucks for transportation to the sugar mill. Olaa Sugar Company has about 340 plus miles of roadway on its own land, and about 106 miles of roadway which is on independent growers' acreage, over which the Company also has a right of way, or a total of about 450 miles of private roadway in the 14,300 acres of cane land. All of the cane is loaded on plantation field roads; none of it on public highways. However, a network of public roads connects the various large sections of fields with each other, and with the sugar mill at Olaa, and these public roads are used by Company's trucks, when more convenient, and when necessary.

Burns testified that on Exhibit No. 2A the only Company road shown was the old railroad bed which became a private road with the removal of the railroad tracks, but that the public roads through the area were marked in dark blue lines. On Map 3 the public roads are shown as well as the plantation roads. Examination of the maps discloses that the public highway system is the primary means of transportation between the various sections of the

Company's lands and the sugar mill, and are the only hard surface roads in the entire area.

The Company's mill is located close to Olaa village (shown on Exhibit No. 2A). The longest haul is from Kanaili, Malama, to the mill, a distance of approximately 23 miles. It is also approximately 12 or 14 miles from the Pahoia area to the mill.

On cross-examination Burns testified credibly that there are 170 people employed at the mill, in factory operations and associated service operations. A value of between 6 to 7 million dollars was placed on the mill by an insurance company in a recent appraisal. The original cost of the mill on the books of the Company is \$1,200,000. The Company's production of sugar in 1953 amounted to 55,967 tons of 96° sugar. Olaa stands sixth among the sugar mills in the Hawaiian Islands rated on the basis of total production. Burns also said that the usual term of the Company leases to independent growers is 15 years, and that of the 6900 acres of independent growers' land, approximately 2500 acres was Company owned; the balance was owned outright by the independent growers. The Company usually made contracts for sugar cane with the independent growers on a crop-to-crop basis. The independent grower paid for the seed cane and was responsible for all irrigation and cultivation necessary to bring the crop to maturity. As to harvesting there were two types of arrangement, one by which the Company performed the harvesting at the expense of the independent grower, and another where the grower performed the harvesting. In 1953 the only harvest-

ing performed was by hand, the Company performing the work, and the grower paying for the cutting and piling. The entire cost of harvesting an independent grower's cane was borne by the grower, but the labor was furnished by the Company through its own labor force, which consisted of cane cutters. After the cane was cut, its transportation to the mill was the responsibility of the Company alone. The Company fields and the independent grower fields are intermingled. The average holding of independent growers varies from an acre to 200 acres, but the average is approximately 12-15 acres. All terms of the contract between the independent growers and the sugar companies are under the supervision of the Department of Agriculture.

George Mair, the harvesting superintendent of the Employer, testified credibly, giving a clear description of harvesting operations. He also described the work of the cane truck drivers. He said that the hand-harvesting operation at Olaa in 1953 was subdivided into three sections—Mountain View, Olaa, and Puna. Each of these sections was under the supervision of a harvesting overseer, each of whom had approximately 4 - 5 gangs of cane cutters, approximately 130 men, under him. In the morning the men were taken to the fields of matured cane, which had been burned the previous day, and each was assigned five lines of cane, which are 5 feet apart, to cut. Slings were distributed to the men, and each one dragged a sling to his assigned place. As he cut the cane into piles of $1\frac{1}{4}$ ton, the cut cane was piled on the slings. A traveling crane

which moved along the field, then picked up the piles of cane, and deposited them into the trucks, or trains, for transportation to the mill. It was one of these trucks which Banez, as a senior cane truck driver, operated at the time of his discharge. In the 1953 harvest the Company operated 15 White gasoline trucks and 6 GMC diesel trucks. He said he was not sure of the horsepower of these trucks, but he explained that the equipment as used, and as driven by the senior cane truck drivers, consisted of a tractor-truck to which was attached a semi-trailer, and full trailer. This equipment comprised a "train" which was 64 feet long over-all, and rolled on 26 wheels over-all. The frames of the semi-trailer and full trailer were approximately 12 feet high and 8 feet wide. Each of such trains carried a load of approximately 16-18 piles of cane, making a payload of approximately 22 tons. The same equipment was used on both the public highways and private roads of the Company. The field roads are one-way roads, while the public roads are two-way.

Mair stated that the central point of all trucking operation was the mill, from which the trucks were dispatched and their operations controlled by a dispatcher who directed operations by means of radio-telephone. He explained that when a truck left the dispatcher's shack at the mill, the time was noted. When it reached the field, the loading foreman on the traveling crane, who has a radio-telephone in the cab of the crane, reported the truck's arrival by number. Thereafter, he notified the dispatcher when loading of the truck was begun, when the loading

was completed, and when the truck left the field for the mill. The truck dispatcher recorded the time and each movement of each truck in his log. A trip from the mill to the farthest point in the Company's fields, and return to the mill, took 2½ to 3 hours. In general, the trucks were routed via Company roads where the cane was cut, to the nearest public highway, and thence over the public highway to the mill. The Company roads ran through the cane fields at intervals of 500 feet, and were one-lane, dirt roads. The trucks went in on one road and out by another. The cane from some fields near the mill, and from other fields which could be reached via the old railway bed, could be transported to the mill by using Company roads alone, but the general practice was to use the two-lane, hard-surfaced public roads where practicable.

In December 1953 the Employer had 33 truck drivers, all under the dispatcher who supervised truck drivers only, except for a small crew who took tare samples of the sugar cane.

Mair testified that on an annual basis, truck drivers spent approximately 50-60 percent of their time on public highways and 40-50 percent on Company roads. He also said that all loading and unloading was performed exclusively on Company property, and not on the public highway, and that during loading and unloading the truck drivers had no duties except to stay with their truck, move it as required, and chop off any cane stalks protruding from the vehicles. In 1953 the Company operated 19 trains, approximately 11 on each shift, three 8-hour

shifts per day. He explained that a day shift of cane-cutters could cut sufficient cane to keep truck drivers busily engaged for three shifts. During 11 months of the year cane cutting, and transportation, continued at that same steady rate. One month each year was devoted to an overhaul of equipment. During that month truck drivers worked on trucks at the Company's garage.

The transportation of the cut cane from the fields of independent growers, and from the fields of the Employer, are accomplished by the same force of truck drivers, the same trucking equipment, and by the same methods of dispatch. The truck drivers spend about half their time hauling cane from the Company's fields, and half their time from the independent growers' fields.

Mair said that senior cane truck drivers did not operate anything but cane trucks. Jobs in this classification were filled by posting, and selection by the Company on the basis of ability, with due consideration being given to seniority, and all other relevant factors. The General Counsel introduced in evidence the job description for senior cane truck drivers as prepared by the Company. Mair testified that the job description was originally prepared by the control dispatcher, checked with the Industrial Relations Department, and then by himself, as the head of the department. This job description specifies the abilities, and duties of senior cane truck drivers in minute detail. It is especially noteworthy for two reasons: (1) the numerous duties there detailed relate to truck driving only, there is no prescribed

conduct therein that could possibly be classified as an "agricultural" task; (2) a condition precedent to occupying the position is the possession of a County of Hawaii vehicle operator's license.⁸

III. The unfair labor practices

A. Background.

There is no substantial conflict in the testimony as to the events which culminated in the discharge of Banez on December 17, 1953. It is undisputed that the contract between the parties, in effect at all times pertinent hereto, contained in Section 1, entitled Recognition and Union Security the following paragraph:

Any claim by the Union that action on the job of a non-union employee covered by this agreement is disrupting harmonious working relations may be taken up as a grievance. Repeated disruption of harmonious working relations shall be grounds for discipline or discharge. (Emphasis supplied.)

The background of the employment of Banez is likewise undisputed. His Employee Service Record⁹ discloses that he was born in the Philippine Islands in 1918, completed 11 grades at English-speaking schools in those islands, and entered the Territory of Hawaii in 1946. He is married and has one child. He began his employment with the Company in February 1946 as a cane cutter, and continued in its employ until his discharge. His first rate of pay,

⁸ General Counsel's Exhibit No. 5.

⁹ Employer Exhibits Nos. 8-A and B.

shown by his record, was 74 cents per hour. In his 7 years' service with the Company he occupied twenty various positions in milling, field, and transportation. Each change of position, apparently, was accompanied by an increase in his rate of pay, except in two, of the 20 changes enumerated in his record. The principal positions which he held successively: cane cutter, 74 cents per hour; centrifugal operator, 78 cents per hour; fingerlift operator, 81, 86, and 92 cents per hour; utility electrician trainee, 80, 83, and 94 cents per hour; field transportation handyman, 94 cents per hour; and his last position, senior cane truck driver at a rate of pay of \$1.17 per hour, which was raised to \$1.28 per hour on September 1, 1952. He continued as a senior cane truck driver at that rate of pay until December 17, 1953, when he was discharged, as hereafter related. The nature of the changes in Banez' employment were noted on his service record, which summarized, shows that from February 4, 1946, to December 17, 1953, he was: transferred on seven occasions; reduced on one occasion, in October 1948; and transferred-reduced on one occasion, on November 26, 1951; and upgraded on ten occasions—the last upgrading, being dated August 7, 1952, to senior cane truck driver, his last position.

When Banez began his employment with the Company he became a member of the Union and continued in membership until the latter part of 1951. During the years of his membership he authorized a checkoff of his dues by the Company. He did not authorize a checkoff for the year 1952, and he did

not pay any dues thereafter. Banez stated that thereafter he was not a member of the Union, and it was stipulated by the parties that at the conference of October 19, 1953, which will be hereafter described, the Union represented to the Company that Banez was not at that time a member, and had not been a member for some months prior thereto.

It is likewise undisputed, that for many months prior to the discharge of Banez, the Company had been planning the mechanization of its field operations. The introduction of mechanical equipment for the cutting of sugar cane, would result in a large reduction in the number of cane cutters employed by the Company. Company officials expected to cut the work force from its normal complement of 1100 employees to 540 employees, with the installation of the mechanical equipment in December 1953. They were apprehensive of labor trouble occasioned by the reduction in force, and were especially apprehensive of the reaction of the Filipino employees, who to a very large extent made up the field force, and who would receive 75 percent of the planned reduction. Desiring to effect the reduction with a minimum of friction, Company officials discussed the situation with the representatives of the Union, and it was agreed that the reduction in force would be based on seniority and ability to do the work. A short time after this first arrangement was made, the Union asked that certain employees with large families who would be disqualified on the basis of seniority and ability, be retained on the

payroll as "hardship cases." The Company agreed to consider the proposed hardship cases, and vary the general bases, where warranted by the circumstances. It is against this background that the discharge of Banez was accomplished.

B. The conference of October 19, 1953.¹⁰

Francisco Latore, who in 1953 was the second vice president of the Union, testified that about August 10, two men, named Dela and Revera, came to his home and showed him a petition. He told the men that they should get permission to circulate a petition from the executive board of the Union. He asked them what the petition was for. They were reluctant to answer, but upon further questioning said that they wished to call a general membership meeting of the Union to clear up some misunderstanding between the rank and file and the Japanese officers of the Union. He took the men to a meeting of the executive board, but they refused to tell the board the purpose of the petition. On the following day, he learned that Banez also was circulating a petition. The executive board of the Union designated him to investigate the activities of the three men and to report, which he did. As a result of his report, the executive board requested a conference with Company officials. On October 19, the conference was held.

At this conference, the Company was represented

¹⁰ All dates in this section of the report are in 1953 unless otherwise noted.

by Nelson L. West, Assistant Manager; Myron O. Isherwood, Director of Industrial Relations; and Caleb S. Burns, Jr., Manager of the Company, previously referred to. The Union was represented by the members of its grievance committee, about 20 in number, including employees Latore, Kinji, Omuri, Shirasaki, Inaga, Arakaki, and Fred Low, a business agent of the Union, not an employee of the Company. All the Company representatives testified as to the events of this conference, as did Latore and Arakaki. These witnesses were in agreement as to the substance of the conference.

To start the meeting off, Burns asked who would be the spokesman for the Union. Latore answered that he would, and thereafter Latore and Arakaki acted as spokesmen. Latore told the Company representatives that three men, Dela, Revera, and Banez, were engaged in circulating petitions, a copy of which he had not been able to obtain, but which was critical of the union officers, who belonged to the Japanese nationality group. He said that Banez had made remarks to the effect that the officers of the Union, being of Japanese extraction, had favored the Japanese employees in the proposed lay-offs, and in job opportunities, to the detriment of Filipino employees. The spokesmen for the Union then called upon various members of the Union who were present to tell of various incidents showing improper conduct by Banez in the course of his employment. Evidently these incidents covered hitherto un-noticed delinquencies of Banez in his various jobs, and derogatory remarks made by him

about the union officers. The union representatives said that the activity of the three men had fostered racial or national antagonism between the Japanese officers of the Union, and the Japanese employees on one side, and the Filipino employees on the other.¹¹ Dela and Revera were union members, so the Union felt that it could take care of those individuals. However, as to Banez, the Union took the position that his conduct constituted a violation of Section 1 of the contract, in that his activity disrupted the harmonious working relations existing between the Employer and the Union, and the Union demanded that the Company take action against Banez pursuant to that section of the contract. The Company representatives told the Union that they were very much concerned with any racial or national antagonism, and that they would check into the matter. Burns also assured the Union that the policy of the Company was not to consider national or racial matters in regard to layoffs, promotions, or job opportunities.

In his testimony, Latore said that he told the Company that Banez had been circulating petitions, and had been seeing too many stewards, saying that

¹¹ It should be understood that any reference in this report to the "Japanese" or "Filipino" employees merely adopts the language of the witnesses. Such was their manner of reference. There was no evidence as to the citizenship of any of these people. I presume they are all Americans, by either birth or naturalization, so the terms are descriptive of ancestry, or place of birth only.

the Japanese are looking out for their nationality alone, and the Filipinos were being deprived of opportunities for promotions and jobs. He also said that he learned from other employees that the substance of Banez' petition was that some of the Filipino employees were dissatisfied with some conditions, and they wanted a general meeting of the Union to clarify some of these misunderstandings. The Union officers felt there were regular channels for bringing up such matters, and that the petition was not the proper procedure. When Latore was questioned closely as to what request the Union made to the Company in regard to Banez, he answered, "We just told the Company to act upon this grievance; either transfer him, or kick him out of the Company. It is not our business."¹² A question or two later, he said that the Union asked the Company to take "disciplinary or discharge" action, using the terminology of Section I. A little later he was asked, "You couldn't fire him yourself, but you were asking the Company to do this weren't you? Isn't that right?" His answer was "Yes."

The officials of the Company who were present at the meeting stated that the tenor of the Union's grievance was that the Union demanded that the Company take action against Banez pursuant to Section 1 of the contract, although none of the Union representatives requested or demanded that Banez be fired in so many words.

¹² Transcript, page 204, et seq.

C. The discharge of Banez.

On December 17, 1953, Burns, the manager of the Employer, sent the following letter to Banez:

Dear Sir:

This will be notice to you that your services will no longer be required by Olaa Sugar Co., Ltd., on and after December 17, 1953.

This action is taken as a result of your actions in violation of Section 1 (Recognition and Union Security) of the agreement between Olaa Sugar Co. Ltd. and the United Sugar Workers, ILWU, Local 142, as brought to our attention by the union.

Yours truly,¹³

On January 7, 1954, Burns sent the following letter to Banez in explanation of the prior letter:

Dear Sir:

The reason for your discharge, as of December 17, 1953, was as stated in our letter of December 17, 1953 — violation of Section 1 (Recognition and Union Security) of the agreement between this Company and the United Sugar Workers, ILWU, Local 142, as brought to our attention by the union.

The details of this violation, as presented to us by the union, were explained to you at the time of your meeting with Assistant Manager West on December 23, 1953.

Very truly yours,¹⁴

Apparently the first official notice that Banez had that his conduct had evoked action by either the

¹³ General Counsel Exhibit No. 15.

¹⁴ General Counsel Exhibit No. 16.

Union or the Company was received by him in the Company's discharge letter of December 17. Before receipt of this letter, neither the Company nor the Union warned him of the pending action against him, or afforded him an opportunity to defend himself.

As mentioned in the letter of January 7, 1954, he was afforded some information relative to his discharge by Assistant Manager West in an interview which occurred on December 23, 1953. Both Banez and West testified credibly, giving almost identical accounts of what each said in this interview.

West's version of the interview made crystal clear the motivation of the Company in the discharge of Banez. It is quoted verbatim:¹⁵

Mr. Banez came to see me. He originally asked for a meeting with Mr. Burns. Mr. Burns was in Honolulu at the time that Mr. Banez wanted to see him, and he asked me to interview Banez in his stead. Mr. Banez came to my office, it was in the afternoon if I recollect right, and asked me why he was discharged. I told Mr. Banez that the Union had filed or had brought up a grievance to the Company and we had held at their request a meeting, that there were some 20 odd members present at this meeting, and they had brought out at this meeting that he — Banez — was disrupting harmonious relationships with the Company, by circulating a petition against the officers of the Union, and was

¹⁵ Transcript, page 428.

fostering racial discontent among the Filipinos, claiming the Japanese were getting all the breaks in this layoff procedure that we were in the middle of.

I also told Mr. Banez that his work record at Olaa had been very poor. And Mr. Banez reviewed his long disagreement with the Union over many issues which he brought out, such as the union shop, claiming that the union officers were out to get him, and had brought this action against him for that reason. I told him that it was no concern to the Company what the internal affairs of the Union were and we were not interested in it, but we were sincerely disturbed by this charge of racial, stirring up of racial discontent.

Mr. Banez asked me what he could do in regard to this discharge. I told him that the steps of the grievance procedure were open to him. I also told him that if he took the grievance procedure to its final conclusion, which would be arbitration, that he could not possibly expect the Union to pay for the cost of the arbitration since they had brought these charges against him, and that it would cost him, would be of some cost to him to take this matter to arbitration.

Mr. Banez asked me whether there was any charges made by other than the officers. I told him that there were approximately 20 people there and that various members of this union committee had stood up and given testimony in regard to his actions. That testimony was covered by Mr. Isherwood in his testimony and is correct as he gave it.

I also told Mr. Banez that if he took this matter through arbitration and was successful in regaining employment with the Company, that he would still have to live with the people on the plantation there, and giving him a little advice I said that he would probably be happier if he didn't spend this money to go to arbitration and maybe attempted to find employment elsewhere.

Mr. Banez agreed with me, said that he wanted to stay and fight the Union, bringing up other matters such, as he put it, communist-led union; that they were out to get him and he was there, was going to stay there, and fight this matter to a final conclusion. I think in general that is the gist of the meeting.

It should be noted that in the above testimony, West referred to the "poor work record" of Banez. His reference is in line with much more detailed testimony by Manager Burns, who testified that as a result of the conference of October 19, he asked for and received Banez' complete work record. He assessed the record as poor, and considering the Union's complaint "in the light of his poor work record," he decided to discharge Banez. It was the injection of the factor of Banez' work record into the case, to which the General Counsel promptly objected, that resulted in the amendment of the Employer's answer, as previously noted. To substantiate Burns' testimony as to Banez' poor work record, the Employer introduced records pertaining to three disciplinary layoffs, and three reprimands

given Banez in the course of his 7 years' employment.¹⁶

Giving due consideration to the undisputed evidence in the case, I am not persuaded that the work record of Banez played any part in influencing Burns to a decision to discharge Banez. On the contrary, I am satisfied that the feature of Banez' work record is merely a pretext, belatedly thought of, and seized upon, by the Company in an effort to exculpate itself. The testimony of the Company officials on this point, as given from the witness stand, lacked persuasive quality, and stands refuted by other undisputed evidence in the case. The Company's discharge letter given to Banez on December 17, and the Company's letter of explanation of the discharge given Banez on January 7, 1954, state in unequivocal language that Banez was discharged because of his "violation of Section I . . . of the agreement." Furthermore, Banez was a senior truck driver at the time of his discharge, and all his delinquencies were in the remote past. It is conceded that he had been punished by disciplinary action for each of his past infractions of Company rules, and that for some months prior to his discharge he had been charged with no new infractions or delinquencies, save that charged by the Union. At the time of his discharge Banez stood in the same position as any other employee previously reprimanded—that of one whose record was less than

¹⁶ Employer's Exhibits 7A, B, C, D, E, F.

perfect, but good enough to be retained in employment.

One further fact should be mentioned. Burns testified, and it is undisputed, that as far as he knew Dela and Revera was still employed by the Company.

Concluding Findings

Upon the credible evidence, I find that on October 19, 1953, the Union requested the Employer to take disciplinary action against or to discharge Banez, pursuant to Section I, eighth paragraph, of the contract between those parties, and that on December 17, 1953, the Employer complied with the request by discharging Banez. I specifically find that Banez was not discharged because of his poor work record, or for cause.

That the above-mentioned section of the contract is discriminatory as alleged by the General Counsel, is patent, from the disparate treatment afforded Banez, a nonunion man, on the one hand, and that accorded Dela and Revera, union members, on the other. By its terms, the provision confers on the Union the right to initiate the disciplining or the discharge of nonunion employees of the Company. It has no such right in regard to its own members. The provision is an instrument of obvious purpose, by which the employees who refrain from joining the Union are made, none the less, subservient to it. In the instant case, Banez, one of the nonunion employees, felt that his particular group had not been treated fairly in the arrangements for job redistribution made by the Union with the Com-

pany. He exercised his right of free speech to criticise the arrangement, and the employee representatives who had made the arrangement, and sought by the circulation of a petition to enlist the support of others who shared his views. In this conduct he exercised his fundamental right of free speech guaranteed to him by the Constitution, above and beyond the guarantees of the same right vouchsafed him by the National Labor-Management Act. However, the officers of this Union sought by the provision in question to deprive him of this right, and force him to accept in silence, what they gave him, regardless of whether it was fair or not. With the merits, or the truth of Banez' criticism, we are not here concerned, but we are concerned with his right to voice his criticism. It may be that his criticism of the union officers was entirely unjustified, but they must suffer the criticism as one of the unpleasant features of office, and reply by words or conduct that deny or disprove the criticism; they may not silence their critic by force, the forfeiture of his property, or by the forfeiture of his job by which he lives, and supports his family. The evidence establishes, beyond doubt, that the union officers caused the Employer to effect just such a forfeiture. And the Employer's conduct is no less reprehensible. It may have been apprehensive of dissatisfaction among the employees occasioned by the reduction in force, and made what to them seemed to be an expedient arrangement with the Union as to how the reduction would be effected, but that is no excuse for the Employer's violation of Banez' rights.

Although, inherent in the Union's complaint about Banez, the nonunion employee, was knowledge of similar conduct by Revera and Dela, the union employees, and although on its face Section I of the contract discriminated between union and nonunion employees, yet the Company weakly submitted to the Union's discriminatory demand, discharged Banez, and continued the employment of the union employees. That this discriminatory provision of the contract and the conduct of the Union and the Employer are unlawful, is clear from the recent decision of the Supreme Court in *Radio Officers' Union v. N.L.R.B.*, 347 U. S. 17.

Mr. Justice Reed, in the opinion of the Court, has the following to say in regard to the prohibitions of the Act against discrimination in the hire and tenure of employees by employers or by unions:

... The policy of the Act is to insulate employees' jobs from their organizational rights.⁴⁰ Thus Sections 8 (a) (3) and 8 (b) (2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood. The only limitation Congress has chosen to impose on this right is specified in the proviso to Section 8 (a) (3) which authorizes employers to enter into certain union security contracts, but prohibits discharge under such contracts if membership "was not available to the employee on the

⁴⁰ See Section 7, 29 U.S.C. (Supp. V) Section 157, note 13, *supra*.

same terms and conditions generally applicable to other members” or if “membership was denied or terminated for reasons other than failure of the employee to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.”⁴¹ Lengthy legislative debate preceded the 1947 amendment to the Act which thus limited permissible employer discrimination.⁴² This legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel

⁴¹ The full text of the proviso to Section 8 (a) (3) is set out in note 1, *supra*. That congress intended section 8 (a) (3) to proscribe all discrimination to encourage union membership not accepted by the proviso see H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 44, where it is stated that Section (8) (a) (3) “prohibits an employer from discriminating against an employee by reason of his membership or nonmembership in a labor organization, except to the extent he obligates himself to do so under the terms of a permitted union shop or maintenance of membership contract.”

⁴² Under the Wagner Act the proviso read: “Provided, That nothing in sections 151-166 of this title or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in said sections as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 159 (a) of this title, in the appropriate collective bargaining unit covered by such agreement when made.” 29 U.S.C. Section 158 (3). See *Colgate-Palmolive-Peet Co. v. Labor Board*, 338 U. S. 355 [25 LRRM 2095].

payment of union dues and fees. Thus Congress recognized the validity of unions, concern about "free riders," i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union, and gave unions the power to contract to meet that problem while withholding from unions the power to cause the discharge of employees for any other reason.⁴³ Thus an employer can discharge an employee for nonmembership in a union if the employer has entered a union security contract valid under the Act with such union, and if the other requirements of the proviso are met. No other discrimination aimed at encouraging employees to join, retain membership or stay in good standing in a union is condoned.⁴⁴ (Emphasis in above supplied.)

⁴³ For example, Senator Taft said: "It is contended that the employer should be obliged to discharge the man because the union does not like him. That is what we are trying to prevent. I do not see why a union should have such power over a man in that situation." 93 Cong. Rec. 4191.

In H. R. Rep. No. 245, 80th Cong., 1st Sess., p. 33, it was stated that "The bill prohibits what is commonly known as the closed shop, or any form of compulsory unionism that requires a person to be a member of a union in good standing when the employer hires him."

See also 93 Cong. Rec. 4135, 4193, 4272, 4275, 4432; S. Rep. No. 105, 80th Cong., 1st Sess. 6 et seq.; H. R. 3020, 80th Cong., 1st Sess., 27-28; H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 41.

⁴⁴ See *Labor Board v. Eclipse Lumber Co.*, 199 F. 2d 684 [31 LRRM 2065]; *Union Starch & Refining Co. v. Labor Board*, 186 F. 2d 1008 [27 LRRM 2342].

* * * *

Therefore, I find that the Employer has violated Section 8 (a) (1) and (3), and the Union Section 8 (b) (1) (A) and Section 8 (b) (2) of the amended Act, as alleged in the complaint.

The Motion to Dismiss

In the motions to dismiss, the Respondents rely principally upon two recent decisions, one by the Board¹⁷ and the other by the Court of Appeals, Ninth Circuit.¹⁸

From an over-all consideration of his duties, it would appear that Banez, as a senior cane truck driver was not an agricultural worker. The description of that job furnished by the Employer, which is the only evidence of that nature, establishes that all his time is spent driving a truck-tractor, to which are coupled a full trailer and a semi-trailer. These vehicles form a "train" of considerable proportions, which must require skillful operation. From the job description, and the testimony of Mair, it would appear that Banez spent 100 percent of his time driving this vehicle, except for one month each year, when equipment was overhauled, when he worked on the trucks at the garage. He did not at any time lend a hand to any agricultural operation.

¹⁷ Clinton Foods, Inc., 108 NLRB No. 16, 33 LRRM 1481.

¹⁸ Waialua Agricultural Company, Limited, et al., 216 F. 2d 466, certiorari granted U. S. Supreme Court.

According to Mair's testimony, Banez drove his vehicles on the public highways over half the time. While the maps may indicate a larger proportion of private roads in the area than public roads, that disproportion is deceptive. The Company has roads or lanes, one-vehicle wide, through the cane fields at intervals of approximately 500 feet. The total mileage of these one-way dirt roads is a substantial figure, but it should be borne in mind that Mair testified that the usual manner of operation was to route the vehicles over the public highways, then into the fields via the private lanes, and to bring them out by the shortest route to the highway, and thence to the mill. When it is considered also, that loading and unloading occurred on Company property, and that such time was included in time spent on Company property, although the driver merely awaited completion of the operation, it would appear that most of Banez' duties as a driver were performed on the public highway.

Banez and the other drivers hauled the cane of independent growers to the mill, in addition to cane raised on Company lands. I take it, that the ratio prevailing between the two types of land, would be reflected in the work of the drivers. On that basis, they spend very nearly as much time hauling independent grower-raised cane as they do hauling company-raised cane. Also, the truck drivers are required to have a driver's license issued by the County of Hawaii. In view of all this evidence it would seem clear that Banez could not be considered an agricultural worker.

In the Waialua case, *supra*, the Circuit Court held that all employees of a large sugar plantation, whose work was necessary to put the crop into a form in which it will not spoil, and to prepare it as "raw sugar," for shipment to the mainland of the United States for manufacturing, are exempt from the Fair Labor Standards Act. The court held that the exemption extended to employees operating the company mill, and private railroad. However, in a series of cases, the Court of Appeals, First Circuit, held that the exemption did not apply to the milling operations of the Company, which milled the cane of independent growers and its own.¹⁹ Later, the same court specifically held that, "the transportation of sugar cane is incident to milling rather than to farming and therefore is not exempt under the Act."²⁰

It is also evident that the Board in setting up the instant units in the Pepeekeo Sugar case, had in mind the rationale of the Calaf case, *supra*, for it specifically refers to that case by name in its decision.

Inasmuch as the Board has followed a rationale similar to that of the Calaf case, in applying the Labor Act to the sugar industry, I feel constrained to follow that authority. In the Waialua case, the Fair Labor Standards Act, its purpose and its legislative history were before the Court. Here, we are concerned with the Labor Management Relations

¹⁹ *Bowie v. Gonzales*, 117 F. 2d 11 (C. A. 1).

²⁰ *Calaf v. Gonzales*, 127 F. 2d 934 (C. A. 1); see also *Vives v. Serralles*, 145 F. 2d 552 (C. A. 1).

Act, 1947, its purpose and its legislative history. I am not persuaded that decisions of courts interpreting the purpose and application of one Act, can be accepted as limiting the interpretation and application of another Act. Nor am I persuaded that the rider in the Board's Appropriation Act is equivalent to amending the Labor Management Act, 1947.

On the evidence before me, Banez is a full-time truck driver, who is engaged in transporting cane, grown by the Company and others, to the mill, as a part of the milling processes. To hold otherwise would be to reach one of the anomalous conclusions referred to by the Board in the Pepeekeo Sugar case, *supra*.

Inasmuch as the Board has considered and answered the question here involved, I feel constrained to follow its decision in the Pepeekeo case, which appears to be buttressed by the decisions of the Court of Appeals, First Circuit. The Supreme Court decision in the Waialua case should end the conflict on this question. For the reasons stated, the motions are denied.

IV. The effect of the unfair labor practices upon commerce

The activities of the Union and the Employer, set forth in Section III above, which occurred in connection with the Employer's operations, set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor

disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the contract between the Employer and the Union, effective September 1, 1951, and amended October 29, 1952, contained an illegal discriminatory provision, to wit, the eighth paragraph of Section I, it will be recommended that the Union and the Employer cease and desist from giving effect to the illegal provision, and from entering into, renewing, or enforcing any provision of similar nature in the future.

Having found that the Union and the Employer engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It has been found: (1) that from December 17, 1953, the Employer has discriminated against Favorito P. Banez in his hire, tenure, terms and conditions of employment; (2) that such conduct by the Employer encouraged membership in the Union and interfered with, restrained and coerced employees in the exercise of rights guaranteed by Section 7 of the Act; and (3) that the Union engaged in unfair labor practices by causing the Employer to so discriminate, thereby restraining employees in the exercise of rights guaranteed by the Act. It will be recommended, therefore, that the Employer offer to Favorito P. Banez immediate and full reinstatement to his former or substantially equivalent position without prejudice to his senior-

ity or other rights and privileges; and that the Union notify the Employer, in writing, and furnish a copy of said notification to Banez, that it has withdrawn its objections to his employment as a senior cane truck driver by the Employer, at its sugar mill in Olaa, Island of Hawaii, Territory of Hawaii, and request the Company to offer Banez full and immediate reinstatement to his former or an equivalent position.

Having found that the Employer and the Union were jointly responsible for the discrimination in the hire and tenure of employment of Banez, it will be recommended that the Employer and the Union, jointly and severally, make Favorito P. Banez whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to the amount he would normally have earned as wages from December 17, 1953, until his reinstatement as ordered above, less his net earnings during this period. The loss of earnings will be computed in accordance with the formula of the Board stated in *F. W. Woolworth Company*, 90 NLRB 289.

It is also recommended that the Employer be ordered to make available to the Board upon request, payroll and other records to facilitate the checking of the amount of earnings due.

Upon the foregoing findings of fact, and upon the entire record in the case, I make the following:

Conclusions of Law

1. ILWU Local 142 is a labor organization, within the meaning of Section 2 (5) of the Act, which admits to membership both employees and agricultural workers of the Employer.

2. Olaa Sugar Company, Limited, an Hawaiian corporation, is an employer engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. By executing and enforcing the contract provision, aforesaid, the Employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. By causing the Employer to discriminate against employees in violation of Section 8 (a) (3) of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

6. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the foregoing findings of fact and conclusions of law and upon the entire record in the case, I recommend that Olaa Sugar Company, Limited, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Performing or giving effect to paragraph eight of Section I, of its contract with ILWU Local 142, which discriminates between union and non-union employees of the Company.

(b) Encouraging membership in ILWU Local 142, or in any other labor organization of its employees, by the execution or enforcement of any discriminatory provision similar to the one mentioned above, or by any other discriminatory practices.

(c) In any like or similar manner, interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which I find will serve to effectuate the policies of the Act:

(a) Make whole Favorito P. Banez for any loss of earnings suffered, in the manner set forth in "The remedy."

(b) Upon request, make available to the Board or its agents for examination or copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary or useful to an analysis of the

(c) Post at its office and mill at Olaa, Island of Hawaii, T. H., copies of the notice attached hereto as Appendix A. Copies of such notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by a representative of the Employer be posted immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by other material.²¹

(d) Notify the Regional Director for the Twentieth Region, in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order what steps the Employer has taken to comply herewith.

Upon the same considerations, I recommend that ILWU Local 142, its officers, representatives, and agents, shall:

1. Cease and desist from:

(a) Performing or giving effect to paragraph eight of Section I of its contract with the Employer, which discriminates between union and nonunion employees of the Company.

(b) Causing or attempting to cause the Employer

²¹ The record indicates that the employees live at different places throughout the area owned or controlled by the Employer. This provision of the Order requires that copies of the notice be posted in all those places where such notices are customarily posted for employees.

amount of back pay due under the terms of this Recommended Order.

to discriminate against any of its employees or applicants for employment because such employees are not members of the above-named labor organization.

(c) Restraining or coercing employees of the Employer in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Make whole Favorito P. Banez for any loss of pay suffered by reason of the discrimination against him in the manner set forth in "The remedy."

(b) Notify the Employer, in writing, sending a copy to Favorito P. Banez, that the Union withdraws its objection to his employment as a senior cane truck driver, and requests the Employer to offer Banez immediate and full reinstatement to his former or an equivalent position.

(c) Post at all its business offices in the Olaa area, copies of the notice attached hereto and marked Appendix B. Copies of such notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by a representative of said Union, be posted by it immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous

places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by other material.²²

(d) Notify the Regional Director for the Twentieth Region, in writing, within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps it has taken to comply herewith.

It is further recommended that unless within twenty (20) days from the receipt of this Intermediate Report and Recommended Order the Employer and the Union notify the said Regional Director, in writing, that each will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Employer or the Union or both of them to take the action aforesaid.

Dated this 20th day of January, 1955.

/s/ DAVID F. DOYLE,
Trial Examiner.

²² The record indicates that notices to employees are posted by the Union throughout the holdings of the Employer in the Olaa area. This provision requires that copies of this notice be posted in all those places where notices are customarily posted for employees.

APPENDIX A

Notice to All Employees Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We will cease performing or giving effect to Section I, paragraph 8, of our current contract with ILWU Local 142, by which the Union may initiate disciplinary action against or the discharge of non-union employees.

We will not enter into, renew, or enforce any agreement with said labor organization by which the Union may cause us to discharge any nonunion employee, except to the extent that such action is permitted under a union security provision in conformity with the Act, as amended.

We will not encourage membership in said labor organization by hearing a grievance, or discharging any employee, on the ground that the employee has disrupted harmonious working relations, or in any other manner discriminate in regard to hire or tenure of employment or any terms or conditions of employment.

We will not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

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We will make Favorito P. Banez whole for any loss of pay suffered as a result of our discrimination against him.

All our employees are free to become, to remain, or to refrain from becoming, or remaining, members of the above-named Union or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act, as amended.

OLAA SUGAR COMPANY,
LIMITED
(Employer)

Dated:

By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

Notice to All Officers, Representatives, Agents, and Members of ILWU Local 142 Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We will cease performing or giving effect to paragraph eight of Section I of our contract with Olaa Sugar Company, Limited, because of its discriminatory nature.

We will not enter into, renew, or enforce any provision of our contract with the above-named Employer which permits us to request disciplinary action against, or the discharge of, any nonunion employee, except to the extent that such action is permitted under a union security provision in conformity with the Act, as amended.

We will not cause or attempt to cause any employer to discriminate against employees in regard to their hire or tenure of employment, or any term or condition of employment in violation of Section 8 (a) (3) of the Act, as amended.

We will not in any manner restrain or coerce employees of any employer in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as amended.

We will notify the above-named Company, in writing, and send Favorito P. Banez a copy, that we withdraw our objections to his employment as a senior cane truck driver, and request that he be reinstated to his former or an equivalent position.

We will make Favorito P. Banez whole for any loss of pay suffered because of our discrimination against him.

ILWU LOCAL 142
(Labor Organization)

Dated:

By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Affidavit of Service by Mail and Postal Return Receipts attached.

[Title of Board and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT

Comes now Olaa Sugar Company, Limited (hereinafter called the Employer), a party in the above entitled cases, and excepts to the Intermediate Report filed herein by the Trial Examiner, David F. Doyle, and to the proceedings in the above entitled cases in the following particulars:

I.

The Employer excepts to the refusal of the Trial Examiner to grant its motion to dismiss the complaint for lack of jurisdiction. At the commencement of the hearing the Employer filed a written motion to dismiss the complaint. The Trial Examiner refused to grant the motion. Again, at the conclusion of the case, the Employer renewed its motion to dismiss. The decision upon this motion was reserved by the Trial Examiner. In the Intermediate Report the motion to dismiss is denied (Inter. Rep., p. 3). To this denial of the renewed motion to dismiss, as well as to the original denial of the first motion the Employer excepts.

II.

The Employer excepts to the finding by the Trial Examiner that because transportation employees were found in Matter of Pepeekeo Sugar Company, et al. & ILWU, Local 142, et al., 59 NLRB 1532, to be "employees" within the definitions of the Act, and the complainant was a senior cane truck driver, there is no question of his personal status as an employee under the NLRA (Inter. Rep., p. 4). This is an entirely erroneous legal conclusion drawn by the Trial Examiner as will be more fully shown by the brief filed by the Employer in support of these exceptions.

III.

The Employer excepts to the finding by the Trial Examiner that the complainant as a senior cane truck driver was not an agricultural worker (Inter. Rep., p. 16) and his failure to find that the complainant's work was such as to make him an agricultural worker under the Act. In reaching his conclusion the Trial Examiner makes a number of intermediate findings, to which the Employer also excepts: (a) The finding that Mair's testimony was that on an annual basis truck drivers spent approximately 50%-60% of their time on public highways and 40%-50% on company roads (Inter. Rep., p. 8). Mair, a company witness, on cross-examination testified that his best estimate was that about 50% of the senior cane truck driver's time was spent on public roads (Tr. p. 150; repeated on redirect examination, Tr. p. 152). He did testify that his estimate was that actual driving time might be divided, 60%

on public roads and 40% on private roads (Tr. p. 158). Work time and driving time are, of course, two separate and distinct things: (b) the finding that most of the complainant's duties as a truck driver were performed on the public highway (Inter. Rep., p. 17). This finding is erroneous and based upon (1) a misunderstanding of Mair's testimony; (2) a misunderstanding of the nature of complainant's job, and (3) a disregard of witness Anderson's testimony and Employer's Exhibit 6.

Basically the senior cane truck driver's duties are to drive the cane truck from the dispatcher's office in the mill yard to the field, place the truck in position for loading on the plantation road (standing by if necessary to await the completion of the loading of prior trucks), to stand by while the truck is loaded (trimming off loose cane that might fall on the road), to drive the cane to the mill yard and to spot the truck for unloading (standing by until prior trucks are unloaded), and thence back to the field. His working time encompasses not only driving but also the enumerated operations. Mair's testimony was that he estimated half the driver's time was spent on the public road, that eliminating all working time except actual driving time, 60% of the driver's time would be spent on public highways. This, as Mair conceded, was an estimate made on the spur of the moment (Tr. p. 152-153). The Employer's Exhibit 6, consisting of a scientific study of the actual time involved in the truck driver's work, was completely ignored by the Examiner. The exhibit shows that during 1953 actual travel time

per truck trip was 78 minutes; that the average time spent in the field waiting for loading and during loading was 59.07 minutes; that the average unloading time was 18.11 minutes; the total time spent in an average trip, including loading, delivery and unloading, was 155.18 minutes. As a consequence the amount of time spent by the driver in actual travel over both public and private roads was just about half his working time. Applying Mair's estimate that 60% of the driving time would be spent on public roads, the conclusion is inescapable that approximately 30% of the senior cane truck driver's working time was spent driving on public roads, the other 70% being spent in the fields, on field roads or in the mill yard. The finding should therefore have been that less than one-third of the employee's day's work was actually performed on the public highways.

IV.

The Employer excepts to the finding by the Trial Examiner that "The cane from some fields near the mill, and from other fields which could be reached via the old railway bed, could be transported to the mill by using Company roads alone, but the general practice was to use the two-lane, hard-surfaced public roads where practicable." This is an inaccurate finding. The undisputed evidence is that with respect to the fields adjacent to the mill (Fields L, K, E, F and I, G, H, C, C-2 and C-3 as appear on Employer's Ex. 3-A), the public roads are not used at all except when it is necessary to cross them (Tr. pp. 121, 122). Further, the undisputed evidence is

that in working the fields in the Kapoho section and in the Pahoia section on the Pahoia Village side of the Puna Road (Emp's. Ex. 2-A), the road over the old railway bed is used for the haul to the mill in preference to the government road because to get to the government road would require an uphill haul from the fields (Tr. pp. 119-120). In working the other fields it is true the public roads were used where practicable.

V.

The Employer excepts to the finding that the job description of senior cane truck driver is "noteworthy" because "there is no prescribed conduct therein that could possibly be classified as an 'agricultural' task" (Inter. Rep., p. 8) as begging the question. It is indicative of the Trial Examiner's preconceptions that a person operating a truck cannot possibly be engaged in agriculture. This is of course contrary to the decisions of the Board as appears more fully in the supporting brief.

VI.

The Employer excepts to the finding that the poor work record of Banez played no part in the decision to discharge him and that the work record was merely a pretext belatedly thought of and seized upon by the company in an effort to exculpate itself (Inter. Rep., p. 13).

The Trial Examiner has, in making this finding, not only disregarded certain items of evidence but has overemphasized others to the point of distortion. For example, the Intermediate Report stresses that

Banez was a senior truck driver at the time of his discharge (p. 13), the word "senior" being emphasized by underlining. This is to carry the implication that the complainant occupied a more responsible and important position than that of an ordinary cane truck driver. The fact of the matter is that all cane truck drivers on the plantation are senior cane truck drivers. This is apparent from the job title of the position. (Gen. Counsel's Ex. 5) and also from the work record of Banez which shows his transfer from field transportation handyman directly to senior cane truck driver.

The Trial Examiner further states that all the complainant's delinquencies were in the "remote past", referring to the incidents making up his poor work record (Inter. Rep., p. 13). It is hard to justify this conclusion when Employer's Exhibit 7-A shows that on July 24, 1953, less than three months prior to the meeting at which the complaint against Banez was presented to the company, he was suspended for two days for becoming involved in a vehicle collision. The passage of three months hardly places an incident in the remote past. Further, the work record shows that in the 16-month period prior to his discharge on December 17, 1953, he was reprimanded for driving his truck with his wheels locked, resulting in the destruction of two tires; he was reprimanded for failing to follow the directional arrows to the loading field and returning to the mill with an empty truck; and he was suspended for driving his loaded truck three miles on a brake-drum, the tires and wheels on one side of the axle

of the semi-trailer having become detached. In addition he was suspended for the collision previously referred to (Emp's. Ex. 7-B, 7-D, 7-F).

The Trial Examiner finds that the complainant's record was less than perfect but that he was good enough to be retained in employment (Int. Rep., p. 14). In making this finding the Examiner completely ignores the fact that until the layoff in December, 1953 resulting from the mechanization program on the plantation, there was such a shortage of employees that the company had a policy of not permitting any department heads to get rid of any employees unless a cane cutter could be secured as a replacement for every such employee terminated (Tr. p. 265).

It is also to be noted that while the Trial Examiner finds that West, the Assistant Manager of the plantation, testified credibly with respect to the interview on December 23, 1953 with the complainant (Inter. Rep., p. 12), and quotes his testimony verbatim, in which testimony reference is made to West's discussion with the complainant of his poor work record, the Trial Examiner nevertheless goes on to find that "the feature of Banez' work record is merely a pretext, belatedly thought of, and seized upon, by the Company in an effort to exculpate itself". How these two conclusions are compatible cannot be understood.

VII.

The Employer excepts to the Examiner's failure to find that the discharge of the complainant was due to two factors: (1) the stirring up of racial an-

tagonism on the job at a time when such conduct could seriously jeopardize the entire mechanization program of the plantation, and (2) the fact that the employee was not a good worker, his record was poor and at the first time the company was not faced with a shortage of employees, he was let go.

The facts as they clearly appear show that, irrespective as to what may have motivated the Union in bringing this matter to the attention of the company, the company was not concerned with the internal affairs of the Union (See credible testimony of West quoted in Inter. Rep., pp. 12-13) or the complainant's relations with the Union. It was interested only in seeing that harmonious working relations were not disrupted on the job at a time when harmonious working relations were absolutely essential for the successful completion of its layoff program. A reduction in force resulting in the layoff of some 570 out of 1100 employees, some 75% of those to be laid off being Filipinos, the balance of the employees being Japanese and of other racial groups, created such a delicate problem that the management of the plantation was fearful of job action by the Filipinos (Tr. pp. 291-293), testimony apparently not understood by the Trial Examiner (Tr. pp. 338-342). Management had been concerned with this problem since July, 1953, and particularly the complainant's connection with it (Tr. pp. 299-301). The Union's presentation of its complaint in October further crystalized the situation that resulted in the discharge. That the discharge was for cause is clear and the Employer excepts to the Ex-

aminer's finding to the contrary (Inter. Rep., p. 14, lines 18-19).

VIII.

The Employer excepts to the finding of the Examiner that the Employer so enforced the collective bargaining contract as to engage in an unfair labor practice within the meaning of Section 8 (a) (3) of the Act, or interfered with, restrained or coerced any employee in the exercise of any right guaranteed by Section 7 of the Act and so engaged in unfair labor practice within the meaning of Section 8 (a) (1) of the Act. The basis for the exceptions to these findings is contained in the material set forth under the various exceptions hereinabove enumerated.

Wherefore, the Olaa Sugar Company, Limited respectfully prays that the complaint against it be dismissed and for such other and further relief as may be just and proper.

Dated at Honolulu, T. H., this day of, 1955.

OLAA SUGAR COMPANY,
LIMITED,

By SMITH, WILD, BEEBE &
CADES,

Its Attorneys,

By J. EDWARD COLLINS.

[Title of Board and Cause.]

EXCEPTIONS OF ILWU LOCAL 142 TO INTERMEDIATE REPORT AND RECOMMENDED ORDER

Comes now ILWU Local 142, respondent-union above named, by its attorneys, Bouslog & Symonds, and excepts to the Intermediate Report and Recommended Order of the trial examiner herein as follows:

1. The Union excepts to the Examiner's refusal to grant the Union's motion to dismiss the complaint for lack of jurisdiction (General Counsel's Exhibits 10 and 12; see R. 7) either at the outset of the hearing, the conclusion thereof, or in the Intermediate Report.

2. The Union excepts to the Examiner's findings that Banez, the complaining employee, was not an agricultural worker (I.R. 16 et seq.); excepts to the Examiner's application of the Pepeekeo Sugar case, 59 NLRB 1532, to the instant case; and further excepts to the findings as to the operations of the Employer (I.R. 4-8).

3. The Union excepts to the Examiner's findings that Section I, paragraph 8, of the contract, was or is discriminatory or illegal (I.R. 14 et seq.).

4. The Union excepts to the Examiner's findings that the Union engaged in unfair labor practices by causing the Employer to discriminate against Banez, thereby restraining employees in the exercise of rights guaranteed by the Act (I.R. 18).

5. The Union excepts to the Examiner's ruling prohibiting the Union from presenting evidence as to the conduct of Banez in respect to fostering racial hatred and disunity among employees of Employer prior to the discharge (R. 172, l. 24; R. 172, l. 3, ll. 12-16; R. 177, ll. 2-4; R. 219, l. 25; R. 220, ll. 18-19; R. 221, ll. 8-10); and further objects to the Examiner's ruling preventing Union witnesses from detailing the said conduct of Banez (R. 179, ll. 20-22; R. 186, ll. 15-18).

6. The Union excepts to the Examiner's refusal to find that the discharge of Banez was due to his fostering and promoting racial hatred and antagonism on the job which presented a serious hazard to employees, the Union and the Employer alike at a critical and delicate stage in the Employer's technological adjustment that affected all parties concerned. (See R. 328-343; R. 191-199.)

7. The Union excepts to the Examiner's findings and conclusions that the Union caused the Employer to discriminate against employees in violation of Section 8 (a) (3) of the Act, thus engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act; and that the Union restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, thus engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act (I.R. 19).

Wherefore, ILWU Local 142 prays the complaint against it be dismissed.

Dated: Honolulu, Hawaii, this 25th day of February, 1955.

ILWU LOCAL 142,
By BOUSLOG & SYMONDS,
By JAMES A. KING,
Its Attorneys.

Proof of Service attached.

United States of America
Before the National Labor Relations Board

Case No. 37-CA-84

OLAA SUGAR COMPANY, LIMITED

and

FAVORITO P. BANEZ, AN INDIVIDUAL

Case No. 37-CB-6

ILWU LOCAL 142

and

FAVORITO P. BANEZ, AN INDIVIDUAL

DECISION AND ORDER

On January 20, 1955, Trial Examiner David F. Doyle issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative

action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Company and the Respondent Union filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings,¹ conclusions,² and recommendations.

1. The Trial Examiner found, and we agree, that Banez, the charging party herein, is not an agricultural worker excluded from the coverage of the Act.

The Respondents contend that Banez should be found to be an agricultural worker under the Board's decision in the Clinton Foods case.³ In that case, the Board found, in accord with the desires of the parties, that "semi-drivers," who haul fruit exclusively from the roadside to the Employer's

¹ In his Findings of Fact, the Trial Examiner inadvertently failed to find that the Respondent Company is engaged in commerce within the meaning of the Act. We so find.

² In his Conclusions of Law, the Trial Examiner inadvertently failed to conclude that by executing and enforcing the contract provision in issue herein, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and Section 8 (b) (2) of the Act. We so conclude.

³ Clinton Foods, Inc., 108 NLRB 85.

processing plant, are industrial employees; and that "goat drivers," who haul fruit exclusively from the Employer's groves to the roadside, are agricultural employees. The Board further found that "flat drivers," who haul fruit directly from the groves to the plant, are agricultural employees, because of the proximity of the groves to the processing plant (3 miles maximum), the fact that in hauling directly from the groves to the plant the "flat drivers" spend a substantial part of their time on the farm property, and the fact that the operation is conducted by and for the benefit of the employer who admittedly is engaged in a farming operation. For these reasons, the Board concluded that the "flat drivers" were distinguishable from similar drivers who the Board, in the past, had customarily found to be nonagricultural.⁴

The Respondents contend that the Respondent Company's drivers fall into the same category as the "flat drivers" in the Clinton Foods case, and are therefore agricultural workers. However, Banez and the other truck drivers of the Respondent Company are engaged exclusively in hauling sugar cane from the roadside of the sugar cane fields to the Respondent Company's plant. It appears, therefore, that the general operation performed by the Company's truck drivers is more like that of the "semi-drivers" in the Clinton Foods case, and not like that of the "flat drivers," and is therefore industrial

⁴ See *L. Maxcy, Inc.*, 78 NLRB 525, and cases cited therein.

in character. Moreover, even if the general operation performed by the Company's truck drivers be considered as more like that of the "flat drivers" in that case, there are distinguishable factors. Thus, some of the fields from which the cane is hauled are as much as 23 miles from the plant. Moreover, while the truck drivers spend about 38 percent of their time at the roadside during the loading of the trucks, they normally just stand around while others do the loading, and do nothing more after the truck is loaded than to slash off the ends of cane sticks which might be protruding from the truck so that the cane sticks do not strike any objects or persons when the truck is being driven. Accordingly, unlike the "flat drivers" in the Clinton Foods case, the drivers in the instant case perform no actual work on the farm itself so as to be even partly engaged in an agricultural function.⁵ For, contrary to the contention of the Respondent Company, we do not consider the use of the Respondent Company's private roads by the drivers for the sole purpose of transporting the cane from the roadside to the plant as work actually performed on the farm, where the general practice is then to drive the trucks over the public highways to the plant, and the drivers spend 60 percent or more of their driving time on the public highways. And there is, of course, clearly no merit to the Respondent Company's contention that the time spent by

⁵ Thus, the "part-time" rule of the Clinton Foods case, which our dissenting colleague relies on, is not applicable to the instant case.

the drivers at the plant during unloading is time spent in work actually performed on the farm. In addition, independent growers cultivate about as much acreage and grow about as much sugar cane for processing at the Company's plant as the Company does, and the Company's truck drivers spend about one-half of their time hauling the cane of independent growers. Therefore, about one-half of the Company's trucking operation is an independent trucking operation which is conducted for the benefit of other employers. Finally, although the Company's transportation section is considered by the Company as being part of its harvesting department, we note that the truck dispatcher is located at the plant, and that the truck dispatcher supervises the work of the drivers from the plant, which also indicates that the Company's trucking operation is carried on as an incident to, or in conjunction with, its plant operations, rather than its farming operations. We therefore reject the Respondents' contention that Banez should be found to be an agricultural worker under the Board's decision in the Clinton Foods case.

Moreover, this case is also distinguishable from *Maneja v. Waialua Agricultural Company*, recently decided by the United States Supreme Court.⁶ In that case, the Supreme Court held that sugar cane plantation railroad employees who haul cane from the fields to the processing plant, and also transport farm laborers and farming equipment to the fields,

⁶ 349 U. S. 254, decided May 23, 1955.

on a narrow-gauge railway extending throughout the plantation, are agricultural employees as defined in the Fair Labor Standards Act.⁷ Thus, the Court did hold that employees who transport cane from the fields to a processing plant, like the truck drivers in the instant case, are agricultural employees. However, the Court stressed the dual function of the employees involved there in support of its finding. Thus, at the very outset the Court stated that the employees there “not only” haul cane from the fields to the plant, “but also” transport the farm laborers and farm equipment to the fields; later stated that “The railroad is used exclusively for the effectuation of the agricultural function of transporting exempt agricultural workers to the fields, together with their equipment and supplies, and hauling freshly cut cane to the processing plant” (emphasis supplied); and concluded with the statement that “Without it or some other ‘haul’, the land could not be cultivated and the cane, after harvest, would spoil in the fields and be lost” (emphasis again supplied). In the instant case, the truck drivers perform the single function of transporting the cane from the fields to the plant, and have no connection with the cultivation of the cane. Moreover, the Court expressly rested its decision on the fact that “Waialua’s transportation system is all either in or contiguous to its fields, save the

⁷ As stated by the Trial Examiner, the Board, because of the rider to its appropriation, must be governed by the definition of agricultural employee in Section 3 of the Fair Labor Standards Act.

necessary trackage at the mill to accommodate cane cars arriving from various sections of the plantation'' (emphasis supplied). In the instant case, no part of the Respondent Company's transportation system is in the fields, for as we have found above, we do not consider the use of the Company's private roads by the drivers for the sole purpose of transporting the cane from the roadside of the fields to the plant as work performed on the farm, where the general practice is then to drive the trucks over the public highways to the plant, and the drivers spend 60 percent or more of their driving time on the public highways. And while all of these private roads appear to be contiguous to the fields, a considerable portion of the public highways used are not contiguous to the fields. In fact, a long public highway not contiguous to any of the fields must be used to transport cane from the Company's southern fields to the plant which is in the geographically separated northern fields. Added to this, of course, is the fact that 60 percent or more of the Company's transportation system is on the public highways, whereas Waialua's entire transportation system was on its own private railroad beds. Finally, the Court also rested its decision on the fact that Waialua transported on its railroad from the fields to the plant only cane that Waialua grew in the fields; whereas in the instant case independent growers cultivate about as much acreage and grow about as much cane for processing at the Company's plant as the Company does, and the Company's truck drivers spend about one-half of

their time hauling the cane of independent growers. Thus, in *Bowie v. Gonzales*, 117 F. 2d 11 (C.A. 1), the Court of Appeals held that the agricultural exemption under the Fair Labor Standards Act did not apply to transportation employees who hauled cane grown by independent growers. And in *Calaf v. Gonzales*, 127 F. 2d 934 (C.A. 1), the Court held this exemption to be inapplicable to transportation employees hauling cane grown by their own employer, because in its opinion the facts showed that the transportation was incident to milling rather than to farming. In its discussion of the *Bowie* and *Calaf* cases in the *Waialua* case, the Supreme Court did not criticize either case, but, on the contrary, recognized that both were distinguishable from *Waialua*, stating that "We do not believe that either *Bowie* or *Calaf* is apposite."^s We conclude, therefore, that the agricultural exemption under the Fair Labor Standards Act does not apply to transportation employees, who, as here,

^s See also *Farmers Irrigation Co. v. McComb*, 337 U. S. 755, where the Supreme Court noted that one requirement for the agricultural exemption is that the "practices be incidental to 'such' farming" (*Id.*, 766, fn. 15). "Thus," said the Court, "processing on a farm of commodities produced by other farmers is incidental to or in conjunction with the farming operation of the other farmers and not incidental to or in conjunction with the farming operation of the farmer on whose premises the processing is done. Such processing is, therefore, not within the definition of agriculture," citing with approval *Bowie v. Gonzales*, 117 F. 2d 11 (*Id.*, 766-767; emphasis supplied).

haul both cane grown by their employer and cane grown by independent growers.

In view of the foregoing, and upon the entire record, we find that Banez is not an agricultural laborer.

2. The Trial Examiner found, and we agree, that the provision in the contract between the Respondent Company and the Respondent Union under which Banez was discharged is illegal, and that the Respondent Union and the Respondent Company violated the Act by respectively causing the discharge of, and discharging, Banez pursuant to that provision.

The provision in the contract reads as follows: "Any claim by the Union that action on the job of a non-union employee covered by this agreement is disrupting harmonious working relations may be taken up as a grievance. Repeated disruption of harmonious working relations shall be grounds for discipline or discharge." (Emphasis supplied.) On October 19, 1953, the Union requested the Company to discharge Banez, who was not a member of the Union, for violation of this provision, but at the same time stated that the Union felt that it could take care of 2 union member employees who had engaged in the same conduct as Banez. On December 17, 1953, the Company discharged Banez for the stated reason that he had violated this provision of the contract; and in another letter to Banez on January 7, 1954, the Company again stated this as the reason for the discharge. The 2 union member employees who had engaged

in the same conduct for which Banez was discharged were still employed by the Company at the time of the hearing.

In essence, the provision of the contract gives the Union the right to request, and the Company to effect, the disciplining or discharge of only non-union employees for "disrupting harmonious working relations," and gives the Union and the Company no such right with respect to union members. By thus subjecting non-union employees to possible discipline or discharge for such conduct and exempting union employees, the necessary effect of such a provision is to encourage membership in the Union in a manner not permitted by Section 8 (a) (3) of the Act.⁹ The provision is, therefore, discriminatory per se. Moreover, it is clear, from the disparate treatment given Banez, a non-union employee, on the one hand, and the 2 union member employees, on the other hand, that the provision was discriminatorily enforced against Banez. Accordingly, we find that the Union's request for the discharge of Banez, and the Company's compliance with that request, pursuant to such a discriminatory provision, were unlawful.¹⁰

⁹ The proviso to Section 8 (a) (3) only permits compulsory union membership under certain prescribed conditions.

¹⁰ For the reasons stated by him, we agree with the Trial Examiner's finding that Banez' alleged poor work record was not a motivating factor in the Company's decision to discharge Banez. In any event, the Company in its brief concedes that Banez' alleged bad work record was not the motivating

The Respondents contend that the contract provision is not illegal, because it simply incorporates the right of the Union and the Company to effect the discharge of an employee for "disrupting harmonious working relations." Even if the Union and the Company jointly did have the right to effect a discharge for such reasons unrelated to any aspect of union membership or union fealty,¹¹ they could not lawfully incorporate such right in a contract provision which on its face applies only to non-union employees and thus discriminates against such employees for what might otherwise be valid grounds for effecting a discharge. Nor do we find any merit in the Respondent Company's further contention that the provision is not illegal, because the contract does not restrict or abrogate the Company's basic right, apart from the contract, to discipline or discharge union employees for engaging in such conduct. The contract may not restrict or abrogate the Company's basic right in this respect, but it does restrict and abrogate any joint action in this respect by the Company and the Union and is thus discriminatory. This was clearly demonstrated by the disparate treatment of Banez, the non-union employee, and the 2 union employees

cause for his discharge, but was at most only a factor that was considered in determining whether the disciplinary action to be taken under the contract provision should be a discharge.

¹¹ See, however, *Studebaker Corporation*, 110 NLRB 1307, where the Board reserved ruling on a similar issue.

who had engaged in the same conduct as Banez. The Company also contends that the provision is not illegal, because it only obligates the Company to entertain Union grievances involving disruptive conduct by a non-union employee, and does not require the Company to discipline or discharge the employee. The concluding sentence of the provision states that "Repeated disruption of harmonious working relations shall be grounds for discipline or discharge." (Emphasis supplied.) In our opinion, this mandatory language does require the Company to discipline or discharge, upon a grievance presented by the Union, a non-union employee who has engaged in "repeated disruption of harmonious working relations." Accordingly, we find no merit in this contention.

The Respondents also contend that the discharge of Banez under the contract provision was not illegal, because they were simply exercising their right to effect the discharge of an employee for "disrupting harmonious working relations." As already indicated, we do not necessarily agree with the contention that the Union and the Company jointly had the right to effect a discharge for such reasons unrelated to any aspect of union membership or union fealty. In any event, however, the discharge of Banez under a provision which was otherwise discriminatory on its face was clearly illegal, particularly where, as here, there is other evidence which shows that the provision was discriminatorily enforced against Banez, viz., the disparate treatment of Banez, the non-union employee,

and the 2 union employees who had engaged in the same conduct as Banez.

Finally, the Respondent Company urges as a defense to the discharge of Banez that his conduct was seriously jeopardizing the Company's operations and might have resulted in work stoppages. However, such economic pressures on an employer are no defense to what is otherwise a discriminatory discharge.¹²

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Olaa Sugar Company, Limited, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Performing or giving effect to paragraph eight of Section I, of its contract with ILWU Local 142, which discriminates between union and non-union employees of the Company;

(b) Encouraging membership in ILWU Local 142, or in any other labor organization of its employees, by the execution or enforcement of such a discriminatory provision;

(c) In any other manner, interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act, except to the extent that such right may be affected by

¹² See *The Englander Company, Inc.*, 108 NLRB 38; *Wyandotte Chemicals Corporation*, 108 NLRB 1406.

an agreement in conformity with Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Favorito P. Banez immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings suffered as a result of the discrimination against him, in the manner set forth in the section of the Intermediate Report entitled "The Remedy";

(b) Preserve and make available to the Board or its agents, upon request for examination or copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary or useful to an analysis of the amount of back pay due and the rights of employment under the terms of this Order;

(c) Post at its office and mill at Olaa, Island of Hawaii, T. H., copies of the notice attached hereto as Appendix A.¹³ Copies of such notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by a representative of the Company, be posted immedi-

¹³ If this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words, "Pursuant to a Decision and Order," the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

ately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by other material;¹⁴

(d) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order what steps the Company has taken to comply herewith.

Upon the same considerations, it is hereby ordered that ILWU Local 142, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Performing or giving effect to paragraph eight of Section I of its contract with the Company, which discriminates between union and nonunion employees of the Company;

(b) Causing or attempting to cause the Company to discriminate against any of its employees because such employees are not members of the above-named labor organization;

(c) In any other manner restraining or coercing employees of the Company in the exercise of their rights under Section 7 of the Act, except to the extent that such right may be affected by an agree-

¹⁴ The record indicates that the employees live at different places throughout the area owned or controlled by the Company. This provision of the Order requires that copies of the notice be posted in all those places where such notices are customarily posted for employees.

ment in conformity with Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole Favorito P. Banez for any loss of pay suffered by reason of the discrimination against him in the manner set forth in the Section of the Intermediate Report entitled "The remedy";

(b) Notify the Company, in writing, sending a copy to Favorito P. Banez, that the Union withdraws its objection to his employment as a senior cane truck driver, and requests the Company to offer Banez immediate and full reinstatement to his former or an equivalent position;

(c) Post at all its business offices in the Olaa area, copies of the notice attached hereto and marked Appendix B.¹⁵ Copies of such notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by a representative of said Union, be posted by it immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps

¹⁵ If this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order," the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

shall be taken to insure that such notices are not altered, defaced, or covered by other material;¹⁶

(d) Mail to the Regional Director for the Twentieth Region, signed copies of the notice attached hereto marked Appendix B for posting, the Company willing, at the Company's office and mill at Olaa, Island of Hawaii, T. H., in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed as provided above, be returned forthwith to the Regional Director for such posting;

(e) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order what steps it has taken to comply herewith. •

Dated, Washington, D. C., October 26, 1955.

[Seal] ABE MURDOCK, Member,
 IVAR H. PETERSON, Member,
 BOYD LEEDOM, Member,
 National Labor Relations Board.

Philip Ray Rodgers, Acting Chairman, dissenting:

I would dismiss the complaint in this case on the ground that the Company's drivers, including Ba-

¹⁶ The record indicates that notices to employees are posted by the Union throughout the holdings of the Company in the Olaa area. This provision requires that copies of this notice be posted in all those places where notices are customarily posted for employees.

nez, are agricultural employees, and thus excluded from the Act's coverage.

The Company's drivers haul sugar cane from the fields on which the cane is grown to the Company's processing plant. A little more than half the fields' acreage, or 7,418 acres, is owned and cultivated by the Company; the balance, or 6,911 acres, is owned and cultivated by independent growers.

To the extent that the drivers haul sugar cane grown on Company-owned land, I believe that the Board, under the Supreme Court's decision in *Maneja v. Waialua Agricultural Company*, 349 U. S. 254, must find the drivers to be agricultural employees. As I read the *Waialua* case, the Supreme Court there said that under "the comprehensive wording of the agricultural exemption" the transportation of sugar cane to a processing plant by a grower of the cane is an agricultural function.¹⁷

¹⁷ The essence of the Court's thinking in the *Waialua* case with respect to the agricultural exemption appears, I believe, in this passage, 349 U. S. 254, 261:

Furthermore, had *Waialua* not owned a mill its transportation activities from field to mill would come squarely within the agriculture exemptions covering 'delivery to storage or to market or to carriers for transportation to market.' We do not believe the Congress intended to deprive farmers having their own mills of the exemption it afforded farmers who do not. In the debate on the amendment extending exemption to 'delivery to market,' its sponsor made clear that auxiliary activity of the kind here involved would be included within that term. 81 Cong. Rec. 7888.

That the drivers in this case do not haul laborers and equipment, and that they are routed over public highways for a portion of their hauls, are factors which, I believe, are not sufficient to so differentiate the drivers from the railroad workers in Waialua case as to give them a different status under the agricultural exemption. To the extent, however, that the drivers haul cane grown on land owned and cultivated by the independent growers, they appear to be engaged in a commercial hauling venture undertaken by the Company. To that extent, therefore, I would find the drivers to be engaged in nonagricultural work.

But in the Clinton Foods case, 108 NLRB 85, 89, the Board recently held that employees who divide their time between agricultural and non-agricultural employment, spending a substantial part of their time in performing agricultural duties, will be deemed to be "agricultural laborers." I would apply this holding of the Clinton Foods case, which is now established Board doctrine,¹⁸ to the facts of this case, and as it appears, for the reasons I have stated, that the Company's drivers spend a substantial part of their time in an agricultural function, I would find them to be agricultural employees.

Dated, Washington, D. C., October 26, 1955.

PHILIP RAY RODGERS,
Acting Chairman,
National Labor Relations Board.

¹⁸ See Hershey Estates, 112 NLRB No. 164, pp. 3-4.

APPENDIX A

Notice to All Employees: Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will cease performing or giving effect to Section I, paragraph 8, of our current contract with ILWU Local 142, by which the Union may initiate disciplinary action against or the discharge of non-union employees.

We Will Not enter into, renew, or enforce any agreement with said labor organization by which the Union may cause us to discharge any nonunion employee, except to the extent that such action is permitted under a union security provision in conformity with the Act, as amended.

We Will Not encourage membership in said labor organization under such an agreement by hearing a grievance, or discharging any nonunion employee, on the ground that the employee has disrupted harmonious working relations, or in any other manner discriminate in regard to hire or tenure of employment or any terms or conditions of employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We Will Offer Favorito P. Banez immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of our discrimination against him.

All our employees are free to become, to remain, or to refrain from becoming, or remaining, members of the above-named Union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act, as amended.

OLAA SUGAR COMPANY,
LIMITED,
(Employer)

Dated.....

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

Notice to All Officers, Representatives, Agents, and Members of ILWU Local 142: Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will cease performing or giving effect to paragraph eight of Section I of our contract with Olaa Sugar Company, Limited, because of its discriminatory nature.

We Will Not enter into, renew, or enforce any provisions of our contract with the above-named Employer which permits us to request disciplinary action against, or the discharge of, any nonunion employee, except to the extent that such action is permitted under a union security provision in conformity with the Act, as amended.

We Will Not cause or attempt to cause any employer to discriminate against employees in regard to their hire or tenure of employment, or any term or condition of employment, in violation of Section 8 (a) (3) of the Act, as amended.

We Will Not in any other manner restrain or coerce employees of any employer in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as amended.

We Will notify the above-named Company, in writing, and send Favorito P. Banez a copy, that we withdraw our objections to his employment as a senior cane truck driver, and request that he be reinstated to his former or an equivalent position.

We Will make Favorito P. Banez whole for any

loss of pay suffered because of the discrimination against him.

ILWU LOCAL 142,
(Labor Organization)

Dated.....

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Affidavit of Service by Mail and Postal Return Receipts attached.

[Title of Board and Cause.]

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, “Olaa Sugar Company, Limited and Favorito P. Banez, an individual” and “ILWU Local 142 and Favorito P. Banez, an individual,” the same being known as Case Nos. 37-CA-84 and 37-CB-6, respectively, be-

fore said Board, such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceedings was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony taken before Trial Examiner David F. Doyle on August 23 through 25, 1954, together with all exhibits introduced in evidence, also rejected exhibits.

(2) Copy of Trial Examiner Doyle's Intermediate Report and Recommended Order dated January 20, 1955; order transferring case to the Board, dated January 20, 1955, together with affidavits of service and United States Post Office return receipts thereof.

(3) Exceptions to the Intermediate Report received from Olaa Sugar Company, Limited (Respondent herein) on February 25, 1955.

(4) Exceptions to the Intermediate Report received from ILWU Local 142 (Respondent Union herein) on February 28, 1955.

(5) Copy of Decision and Order issued by the National Labor Relations Board on October 26, 1955, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 29th day of June, 1956.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary,
National Labor Relations
Board.

[Endorsed]: No. 15143. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Olaa Sugar Company, Limited and ILWU Local 142, Respondents. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed: July 6, 1956.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15143

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

OLAA SUGAR COMPANY, LIMITED, and
ILWU LOCAL 142, Respondents.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Olaa Sugar Company, Limited, (hereinafter called Respondent Company) its officers, agents, successors, and assigns and ILWU Local 142, (hereinafter called Respondent Union), its officers, representatives, agents, successors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "Olaa Sugar Company, Limited and Favorito P. Banez, an individual, Case No. 37-CA-84" and "ILWU Local 142 and Favorito P. Banez, an individual, Case No. 37-CB-6."

In support of this petition the Board respectfully shows:

(1) Respondent Company is an Hawaiian corporation engaged in business in the territory of Hawaii and Respondent Union is a labor organization engaged in promoting and protecting the interests of its members in the territory of Hawaii, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on October 26, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent Company, its officers, agents, successors, and assigns and Respondent Union, its officers, representatives, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending copies thereof postpaid, bearing Government frank, by registered mail, to Respondents' counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable

Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent Company, its officers, agents, successors, and assigns and Respondent Union, its officers, representatives, agents, successors, and assigns, to comply therewith.

Dated at Washington, D. C. this 22nd day of May, 1956.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board.

Certificate of Service attached.

[Endorsed]: Filed May 23, 1956. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER OF ILWU LOCAL 142

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Comes now ILWU Local 142, one of the respondents above named, by Bouslog & Symonds, its attorneys, and answering the petition for enforce-

ment of an order of the National Labor Relations Board shows as follows:

1. Admits the allegations of Paragraph (1) of the petition, except respondent denies that any unfair labor practices occurred herein and denies this court has jurisdiction under Section 10 (e) of the National Labor Relations Act, as amended (29 USC §§ 151 et seq.) for the reasons which more fully hereinafter appear.

2. Admits the allegations of Paragraph (2).

3. Paragraph (3) requires no answer.

4. The National Labor Relations Board is without jurisdiction herein in that the charging party, Favorito P. Banez, at the time of the acts charged was not an employee as defined in Section 2 (3) of the Act (29 USC Section 152 (3)) by virtue of his being an agricultural laborer and as such excluded from the coverage of the Act.

5. The National Labor Relations Board is without jurisdiction herein in that various appropriation acts, to wit the National Labor Relations Board Appropriation Act, 1954 (Title III, Act of July 31, 1953, Pub. L. 170, 83d. Congress, 1st Session), National Labor Relations Board Appropriation Act, 1955 (Title III, Act of July 2, 1954, Pub. L. 472, 83d. Congress, 2d Session) and the Departments of Labor, and Health, Education and Welfare, and Related Agencies Appropriation Act, 1956 (Title III, Act of August 1, 1955, Pub. L. 195, c. 457, 84th Congress, 1st Session) forbid Board funds from being used with respect to agricultural laborers, as defined in Section 2 (3) of the Act and as defined in

Section 3 (f) of the Fair Labor Standards Act (29 USC Section 203 (f)).

6. The National Labor Relations Board has held in other cases that employees whose duties are the same as or similar to those of the charging party herein, Favorito P. Banez, are deemed agricultural laborers and accordingly excluded from coverage of the Act.

Wherefore, respondent ILWU Local 142 prays that the petition herein be dismissed.

Dated: Honolulu, Hawaii, this 7th day of June, 1956.

BOUSLOG & SYMONDS,
/s/ By MYER C. SYMONDS,
Attorneys for ILWU Local 142.

Certificate of Service attached.

[Endorsed]: Filed June 11, 1956. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER OF OLAA SUGAR COMPANY,
LIMITED

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Now comes Olaa Sugar Company, Limited, one of the respondents above named, by Smith, Wild, Beebe & Cades, its attorneys, and answering the

petition for enforcement of an order of the National Labor Relations Board heretofore filed in this Court in that certain consolidated case described in the opening paragraph of said petition, shows as follows:

1. This respondent admits that it is an Hawaiian corporation engaged in business in the Territory of Hawaii, but it denies that it engaged in any unfair labor practice herein, and denies that this Court has jurisdiction of the petition of the National Labor Relations Board, as alleged in paragraph (1) of said petition, for the reasons more fully set out hereinafter.

2. This respondent admits the allegations of paragraph (2) of said petition.

3. This respondent states that the National Labor Relations Board was, at the time it purported to assume jurisdiction of the instant case, and that it still is, without jurisdiction to prosecute, hear, or determine the matter of the unfair labor practice, and is without jurisdiction to bring or pursue its petition herein, in that various Acts of Congress appropriating funds for the administration, salaries, costs and expenses of the National Labor Relations Board, to wit, the "National Labor Relations Board Appropriation Act, 1947," Pub. 549, Ch. 672, Title IV, 79th Congress, Second Session; the "National Labor Relations Board Appropriation Act, 1949," Pub. 639, Ch. 465, 80th Congress, Second Session; the "National Labor Relations Board Appropriation Act, 1949," Pub. 639, Ch. 465, 81st Congress, First Session; the "National Labor Relations Board

Appropriation Act, 1952," Pub. 134, Ch. 373, 82nd Congress, First Session; the "National Labor Relations Board Appropriation Act, 1953," Pub. 452, Ch. 375, 82nd Congress, Second Session; the "National Labor Relations Board Appropriation Act, 1954," Pub. 170, Ch. 296, 83rd Congress, First Session; the National Labor Relations Board Appropriation Act, 1955," Pub. 472, Ch. 457, 83rd Congress, Second Session; the "Departments of Labor and Health, Education, and Welfare, and Related Agencies Appropriation Act, 1956," Pub. 195, Ch. 457, 84th Congress, First Session, prohibit said Board from using any of its funds with respect to agricultural laborers, as used in Section 2 (3) of the National Labor Relations Act as amended, and as defined in Section 3 (f) of the Fair Labor Standards Act.

4. That the decision of the National Labor Relations Board in holding in the instant case that the charging party, Favorito P. Banez, was not and is not an agricultural laborer, nevertheless conceded in said decision that the Board, "because of the rider to its appropriation, must be governed by the definition of agricultural employee in Section 3 of the Fair Labor Standards Act"; that since said restriction first became effective, the said Board has consistently held in other cases before it that employees whose duties were the same as or similar to those of the said Banez herein, were agricultural laborers and therefore excluded from the coverage of the National Labor Relations Act, and accordingly, from the Board's jurisdiction; and that its decision

in the instant case constitutes a radical and unauthorized deviation from its prior decision.

Wherefore, respondent Olaa Sugar Company, Limited, prays that the petition herein be dismissed.

Dated: Honolulu, Hawaii, this 8th day of June, 1956.

SMITH, WILD, BEEBE & CADES,
/s/ By ARTHUR G. SMITH,
Attorneys for Olaa Sugar Company,
Limited.

Certificate of Service attached.

[Endorsed]: Filed June 11, 1956. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
PETITIONER INTENDS TO RELY

In this proceeding the National Labor Relations Board will urge and rely upon the following points:

1. The Board properly found that the senior cane truck drivers employed by the respondent employer (Olaa Sugar Company, Ltd.), are not "agricultural laborers" exempted from the Act's protection.

2. The Board properly found that by entering into a contract vesting in the respondent Union (ILWU Local 142) the power to cause the discharge of nonunion employees only, the respondent

employer (Olaa Sugar Company, Ltd.) violated Section 8 (a) (3) and (1) of the Act and the respondent Union violated Section 8 (b) (2) and (1) (A).

3. Substantial evidence on the record considered as a whole supports the Board's findings of fact and conclusions that the respondent employer discriminatorily discharged nonunion member Banez in violation of Section 8 (a) (3) and (1) of the Act and that the respondent Union caused the respondent employer to thus discriminate against non-member Banez and thereby violated Section 8 (b) (2) and (1) of the Act.

Dated at Washington, D. C., this 29th day of June, 1956.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board.

[Endorsed]: Filed July 2, 1956. Paul P.
O'Brien, Clerk.

Before the National Labor Relations Board
Twentieth Region

Case No. 37-CA-84

In the Matter of

OLAA SUGAR COMPANY, LIMITED

and

FAVORITO P. BANEZ, AN INDIVIDUAL.

Case No. 37-CB-6

In the Matter of

ILWU LOCAL 142

and

FAVORITO P. BANEZ, AN INDIVIDUAL.

TRANSCRIPT OF PROCEEDINGS

Third Circuit Courtroom, Federal Building, Hilo,
Hawaii, Monday, August 23, 1954.

Pursuant to notice, the above-entitled matters
came on for hearing at 10 a.m.

Before: David F. Doyle, Trial Examiner.

Appearances: David Karasick, Esq., 336 Federal
Bldg., Honolulu, Hawaii, appearing on behalf of the
General Counsel, NLRB. J. Edward Collins, Esq.,
of the law firm of Smith, Wild, Beebe & Cades,
P. O. Box 224, Honolulu, Hawaii, appearing on be-
half of Olaa Sugar Company, Limited, respondent-
employer. James A. King, Esq., of the law firm of
Bouslog & Symonds, 63 Merchant St., Honolulu,

Hawaii, appearing on behalf of ILWU, Local 142, respondent-union. [2]*

Proceedings

Trial Examiner Doyle: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Olaa Sugar Company, Limited, and ILWU, Local 142, Case No. 37-CA-84, and 37-CB-6. [3]

* * * * *

Mr. Karasick: At this time, Mr. Examiner, I have asked the court reporter to mark certain formal documents in this proceeding as General Counsel's Exhibits 1 through 12, inclusive, for identification. These formal documents are as follows:

General Counsel's Exhibit 1 for identification is the charge filed against the Olaa Sugar Company, Limited, in the Thirty-seventh Subregional Office of the National Labor Relations Board, on January 6, 1954.

General Counsel's Exhibit 2 for identification is the affidavit of service of the charge, together with the return post-office receipt attached thereto. [5]

General Counsel's Exhibit 3 for identification is the charge filed against United Sugar Workers, ILWU, Local 142, Unit 3, with the Thirty-seventh Subregional Office of the National Labor Relations Board, on January 6, 1954, and docketed under the number 37-CB-6.

* Page numbering appearing at top of page of Reporter's original Transcript of Record.

General Counsel's Exhibit 4 for identification is the affidavit of service of the charge in the Case No. 37-CB-6 upon the respondent union, together with return post-office receipt attached thereto.

General Counsel's Exhibit 5 for identification is the amended charge filed against ILWU, Local 142, in Case 37-CB-6 on March 15, 1954.

General Counsel's Exhibit 6 for identification is the affidavit of service of the amended charge upon the respondent union, together with return post-office receipt attached thereto.

General Counsel's Exhibit 7 for identification is the consolidated complaint in Cases Nos. 37-CA-84 and 37-CB-6, issued by Gerald A. Brown, Regional Director of the National Labor Relations Board, Twentieth Region, on July 13, 1954.

General Counsel's Exhibit 8 for identification is the notice of hearing, scheduling the hearing in this proceeding at the present time, at this place, issued by Gerald A. Brown, Regional Director of the National Labor Relations Board on July 13, 1954. [6]

General Counsel's Exhibit 9 for identification is the affidavit of service of notice of hearing, consolidated complaint, and original amended charge, on each of the parties to these proceedings, together with return post-office receipts attached thereto.

General Counsel's Exhibit 10 for identification is the motion to dismiss for lack of jurisdiction, and answer, filed on behalf of the respondent union on July 22, 1954.

General Counsel's Exhibit 11 for identification is

the answer of Olaa Sugar Company, filed on August 3, 1954.

General Counsel's Exhibit 12 for identification is the amended motion to dismiss for lack of jurisdiction, filed on behalf of the respondent union on August 19, 1954.

I offer these documents in evidence as General Counsel's Exhibits 1 through 12, both inclusive, having previously been submitted to the parties for their inspection.

Trial Examiner: Is there any objection to the admission of these documents?

Mr. King: No objection.

Mr. Collins: No objection.

Trial Examiner: The documents are admitted in evidence and shall bear as exhibit numbers the number designation which they bore as exhibits for identification.

(The documents referred to were marked as General Counsel's Exhibits 1 through 12, inclusive, and were received in evidence.) [7]

Mr. Collins: Mr. Examiner, at this time I wish to file on behalf of the Olaa Sugar Company a motion to dismiss for lack of jurisdiction. This is in substance the same type of motion as has been appended to the union's answer and encompasses the material also encompassed in their amended motion.

* * * * *

Mr. Collins: If the Examiner please, it is the contention of the company and apparently the same contention of the union that the individual involved in this case was an agricultural employee and as

such falls without the jurisdiction of the National Labor Relations Act and of the Board. That does not appear, of course, in the pleadings themselves, except as raised by the union in its answer and motion. [9]

* * * * *

Mr. Karasick: Mr. Examiner, it is perfectly true that the respondent-employer and the respondent-union and the General Counsel are in disagreement as to the issue of agricultural labor in this case. The General Counsel's position is that the complainant in this case is an employee within the meaning of the Act and not an agricultural laborer.

* * * * *

Mr. Karasick: Mr. Examiner, during recess counsel have agreed that the respondent-employer's motion to dismiss for lack of jurisdiction, which was presented to you this morning, be included in the General Counsel's list of formal exhibits. And I have accordingly asked the court reporter to mark the document as General Counsel's Exhibit 13 for identification, and herewith offer it in evidence as part of the formal file.

Trial Examiner: There being no objection, it is so marked and is received.

(The document referred to was marked General Counsel's Exhibit 13 and was received in evidence.)

Mr. Karasick: As a result of an off the record discussion, Mr. Examiner, counsel for the respondent-employer and [19] counsel for the respondent-

union and counsel for the General Counsel stipulate and agree with respect to the following facts concerning the business operations of the employer in this case.

The employer Olaa Sugar Company, Limited, an Hawaiian corporation, hereinafter called the respondent-employer, is engaged in growing and processing sugar cane on the Island of Hawaii;

The respondent-employer owns and cultivates 7,418 acres on this island and also secures sugar cane from a number of independent growers, whose acreage is 6,911, also located on this island; the respondent-employer produces in excess of \$6,000,000 in value of raw sugar and molasses per year. All of the sugar and substantially all of the molasses so produced is shipped to points located outside the Territory of Hawaii from the factory—from the respondent-employer's sugar mill located at Olaa.

Is that a correct statement, and do you so stipulate, Mr. Collins?

Mr. Collins: There is one thing that should be clarified with respect to that, Mr. Examiner, and that is the figure as to the amount of land that the company produces cane on does not represent the total land holding of the company but merely the land that is used for that purpose. Otherwise, the stipulation is satisfactory. [20]

* * * * *

Mr. Karasick: At this time, Mr. Examiner, I call Mr. Nelson West as an adverse witness for

cross-examination under Rule 43 (B) of the Federal Rules of Civil Procedure.

* * * * *

NELSON L. WEST

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Karasick): What is your official position with the Olaa Sugar Company, Limited?

A. I am assistant manager.

Q. And how long have you held that office, Mr. West? A. Since December 1, 1953.

Q. And prior to that, were you serving in any capacity with the employer, the respondent-employer here? A. Yes, I was.

Q. And in what capacity was that?

A. I was administrative assistant to the manager.

* * * * *

Q. How long have you been serving in one capacity or another with this particular employer?

A. Over 25 years.

Q. What was the position immediately prior to the position you held in 1951 with the company?

A. I was office manager. [22]

* * * * *

Mr. Karasick: As a result of an off the record discussion, Mr. Examiner, counsel for the respond-

(Testimony of Nelson L. West.)

ent-employer, counsel for the respondent-union and counsel for the General Counsel stipulate and agree that as a result of proceedings before the National Labor Relations Board entitled *Pepeekeo Sugar Company, et al.*, reported in 59 NLRB 1532, the union was certified as the collective bargaining representative of certain of the employees of the respondent-employer on March 22, 1945, that since that date the respondent union and the respondent-employer have for all or substantially all of that period been in contractual relationship with respect to collective bargaining covering various employees at the operation of the company located in Olaa.

Is it a correct statement and do you so stipulate, Mr. Collins?

Mr. Collins: Subject to verification of the dates and the NLRB citation number, we so stipulate and agree.

Mr. King: I will stipulate that is substantially correct, but would like to point out that the unit of the ILWU that was first certified was not the one of its present contract holder. There have been some changes by way of merger, consolidation, and so forth within the union itself.

Trial Examiner: Well, gentlemen, I heard the stipulation, and it is so stipulated. [23]

* * * * *

Mr. Karasick: I think that question may well be answered, Mr. Examiner, by the document I am next offering in evidence, which I have asked the

(Testimony of Nelson L. West.)

reporter to mark as General Counsel's Exhibit 14, for identification, and which I have previously submitted to counsel for their inspection.

This document is a printed document bearing on the cover the title "Agreement between Olaa Sugar Company, Ltd. and United Sugar Workers, ILWU, Local 142," and at the bottom the words "Effective September 1, 1951, as amended October 29, 1952." The document is a printed agreement consisting of 62 printed pages, with a table of contents on the cover and an index in the rear.

I offer this document in evidence as General Counsel's Exhibit 14.

Mr. King: No objection.

Mr. Collins: No objection.

Trial Examiner: There being no objection, the document is received and shall be marked "General Counsel's Exhibit No. 14 in evidence." [24]

(The document referred to was marked General Counsel's Exhibit No. 14 and was received in evidence.)

[See page 296.]

Q. (By Mr. Karasick): Mr. West, you know Favorito P. Banez, do you not?

A. Yes, I do.

Q. He previously worked for the company in various capacities, did he not? A. He did.

Q. From 1946 until December 17, 1953, is that correct? A. That's correct.

Q. And he was covered by the terms of the contract, which is General Counsel's Exhibit 14,

(Testimony of Nelson L. West.)

was he not, during the period of his employment by the company? A. Yes, he was.

Q. Am I correct that his last position with the company immediately preceding his discharge was that of senior cane truck driver?

A. That is correct. [25]

* * * * *

Q. Banez was not a member of the union at the time of his discharge, was he?

A. I don't know.

Q. Had you heard at any time whether or not he was?

A. Yes, I had heard that he was not, sometime in October, 1953.

Q. Was that the time that Mr. Arakaki had come in with a group of employees and presented a grievance against Banez?

A. That was the occasion, yes. [27]

Q. And they presented that grievance to you?

A. To the manager, Mr. Burns.

* * * * *

Q. Do you remember the date that the union actually did have the meeting with Mr. Burns?

A. October 19, I think.

* * * * *

Q. That was the time that Arakaki and the committee came in, is that right?

A. That is correct. [28]

* * * * *

Q. (By Mr. Karasick): Did Mr. Burns, before October 19,—I think you have already testified to

(Testimony of Nelson L. West.)

this,—tell you that he had heard that the union had a grievance against Banez or were about to present a formal grievance against Banez?

A. I was informed by Mr. Burns that the union had requested a meeting with him to discuss a problem. I don't recollect whether he knew at that time whether it was Banez or what problem it was. It was just a request for a meeting, that I knew about.

* * * * *

Q. You were present at that meeting?

A. I was present, yes.

Q. And did Mr. Arakaki present the grievance on behalf of the union?

A. I don't recollect whether he presented it on behalf of [29] the union; he did have something to say in the meeting.

Q. In support of the grievance?

A. In support of the grievance, yes.

* * * * *

Q. Now, the grievance presented at this meeting on October 19, 1953, was based on alleged violation of Section 1 of the contract which is General Counsel's Exhibit 14, was it not? And I call your attention specifically to that part of the section which occupies the last two paragraphs on page 2 of the printed copy.

A. That is correct.

Q. As a result of that grievance being filed by the union [30] against Banez, the Company discharged Banez on December 17, 1953, is that right?

(Testimony of Nelson L. West.)

A. As a result of that meeting, yes.

* * * * *

Mr. Karasick: As a result of an off the record discussion, Mr. Examiner, counsel for the respondent-employer, counsel for the respondent-union and counsel for General Counsel stipulate and agree that on December 17, 1953, and on January 7, 1954, letters were sent from the company over the signature of Mr. C. E. S. Burns, Jr., manager, to the complainant Banez with respect to the termination of Banez on December 17, 1953, setting forth the company's reasons with respect to the discharge of Banez, and that these letters I am offering in evidence and have asked the reporter to mark as General Counsel's Exhibit 15 for identification, being the letter referred to of December 17, 1953, and General Counsel's Exhibit 16 for identification, being the letter referred to as January 7, 1954. I herewith offer these documents in evidence.

Trial Examiner: There being no objection, the documents are received.

(The documents referred to were marked General Counsel's Exhibits 15 and 16 for identification and were received in evidence.) [31]

* * * * * [See page 301.]

Mr. Karasick: At this time I call Mr. Arakaki as an adverse witness, for cross-examination, under the same rule.

YASUKI ARAKAKI

was called as a witness by the General Counsel and being duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Karasick): Mr. Arakaki, you are a member of the executive board of the union, are you not? A. Yes.

Q. Is that the executive board of Local 142?

A. Yes.

Q. Of the ILWU? A. Yes.

Q. And in December 1952, the time we are interested in with respect to Banez's discharge, you were a trustee of the——

Mr. King: 1952?

Mr. Karasick: 1953. I beg your pardon.

Q. You were a trustee of the local, were you not?

A. Yes.

Q. You know Favorito P. Banez, the complainant here, do you not? A. I do.

Q. And you know that he worked for a period of years for Olaa Sugar Company, in various capacities? A. Yes, I do.

Q. From 1946 until he was discharged on December 17, 1953, is that right? A. Yes, I do.

Mr. King: Speak up, Mr. Arakaki.

Q. (By Mr. Karasick): In the early years Banez was a member of the union and authorized it in writing to check off, authorized the company in writing, to check off union dues for him each month, is that correct? A. That is correct.

(Testimony of Yasuki Arakaki.)

Q. And then in April 1952 he did not sign a new authorization check off authorization and the company no longer checked off his dues and gave them to the union, is that right?

A. I cannot remember the specific date just the way you have asked me.

Q. I see. Well, was it 1952, Mr. Arakaki, irrespective of the month that that happened?

A. I can't remember.

Q. You don't remember the year. It is true that for some [36] time prior to his discharge Banez was not a member of the union, is it not?

A. That I know; he was not.

Q. That he was not a member of the union, is that correct? A. Correct.

Q. On October 19, 1953, you accompanied by a committee from the union presented a grievance to Mr. Burns and Mr. West against Banez, alleging that Banez had violated Section 1 of the contract between the union and the company, did you not?

A. Nobody accompanied me; I accompanied them.

Q. You accompanied them?

A. I am one of the members of the grievance committee.

Q. I see. And you came in with the grievance committee and from time to time you spoke on behalf of the union's position in the matter, is that right? A. On Banez's matter?

(Testimony of Yasuki Arakaki.)

Q. No. You talked on behalf of the union's position with respect to Banez? A. Yes.

Q. And the union's position was that he had violated section 1 of the contract between the company and the union, is that not right?

A. Will you repeat that again, please?

Q. Yes. The union's position was that Banez had violated section 1 of the contract between the company and the union, [37] is that not right?

A. Correct.

Q. And by section 1, the union's position specifically referred to the last two printed paragraphs on page 2 of General Counsel's Exhibit 14, is that right? A. Correct.

Q. Following the presentation of that grievance, the company, on December 17, 1953, discharged Banez, did they not?

A. I can't remember the date.

Q. It was sometime after the grievance was presented, though, that the company discharged Banez; right? A. Yes.

Q. And to the best of your knowledge, from that date, whatever the date was, he was discharged, to the present date, he has not again worked for the respondent-employer, is that right?

A. That's correct. [38]

* * * * *

Cross Examination

Q. (By Mr. King): I show you the General Counsel's Exhibit 14, section 1, Mr. Arakaki. Here's the eighth paragraph. You have already testified

(Testimony of Yasuki Arakaki.)

it was under that particular portion of the contract that this meeting was held with the company. Right? A. Correct.

Q. And what portion, what is the language there that concerns the grievance committee meeting with the company so far as Banez was concerned?

A. In order to explain the section of this contract, I may have to go back to the intent of the agreement here. That's the way we apply in the plantation level and the cause, the reason why we have this here.

Trial Examiner: Just a minute.

Mr. Karasick: I am willing to stipulate with counsel. I think the witness might have a little difficulty in understanding the purport of the question. If I understand it correctly, after conferring a moment with counsel, I am willing to stipulate with counsel for the respondent-union that the clause relied upon by the union here with respect to the grievance against Banez and his discharge was the clause in [39] the contract, section 1, paragraph 8, which states that a disrupting of harmonious working relations may be the basis for a grievance filed by the union with the company.

Do you accept that stipulation?

Mr. King: Yes, I will agree to that. [40]

* * * * *

Mr. Collins: May the record show, Mr. Examiner, that the company has not entered into that stipulation. [42]

* * * * *

(Testimony of Yasuki Arakaki.)

Trial Examiner: All right. As between the company and [43] the union, as to the stipulation as to the union's position, the stipulation is accepted, and of course it is binding on those parties who participate in the stipulation, the union and the General Counsel. All right. [44]

* * * * *

Q. (By Mr. King): Mr. Arakaki, directing your attention to October 19th or thereabouts, 1953, you testified that you were with a group of union members who had a meeting with the company in this case. Right? A. Correct.

* * * * *

Q. (By Mr. King): And you have already testified, or there is a stipulation, that the matter was about Mr. Banez and his alleged disruption of harmonious working relations. Right?

A. Correct. [57]

* * * * *

Q. (By Mr. King): What did the union say to the company about this particular matter? And did you say it, or who spoke on behalf of the union?

A. With the best of my recollection, the person who spoke for the union was Brother Francisco La Torre.

Q. That is L-a T-o-r-r-e?

A. Correct. He was at that time one of the vice chairmen of the unit. I have participated in the discussion, and with the best of my recollection this is what we brought before the employer committee. That for many years—— [58]

(Testimony of Yasuki Arakaki.)

* * * * *

Q. Who else was there representing the union?

A. You want to know the composition of the committee?

Q. Yes. Yes, please.

A. To the best of my recollection it was Brother Macaysa.

Q. (By Mr. King): M-a-c-a-y-s-a? Is that right?

A. Yes. Correct. Brother Gallado, Brother Omuro, Brother Shirasaki, Brother Batamalome.

Q. (By Trial Examiner): Now, were they the principal members of the committee?

A. Correct.

Q. Who was the spokesman for the committee?

A. Brother La Torre.

Q. And did you also do some speaking for the committee? A. Correct.

Q. Who represented the company?

A. I think the company committee present at that time were Mr. Burns, Mr. West, Mr. Isherwood. There may be one or two others I can't recall.

Q. Now, let me ask you this. When you sat down there, I take it there came a time when you mentioned this Banez. Is that right?

A. Correct.

Q. Did there come a time when you mentioned him? A. Correct.

Q. All right. Who of the union was the spokesman when you reached that point? Who was speaking for the union? A. Brother La Torre.

(Testimony of Yasuki Arakaki.)

Q. And what did Brother La Torre say to management concerning Banez at that time?

A. We call attention to the company that Banez was creating [60] suspicion and hatred between nationality groups, namely, Filipino over Japanese, and recited to the company of the many occurrence, and after the explanation the company said they will take under advisement. And we adjourned that meeting.

Q. (By Mr. King): All right. Now, Mr. Arakaki, just for the record, about how many union members altogether were there? Altogether. Those you named. You said there were some others. How many altogether?

A. In the neighborhood of 20. * * * * * [61]

Mr. Karasick: Mr. Examiner, as a result of an off-the-record discussion it is hereby stipulated and agreed between counsel for the respondent employer, counsel for the respondent union, and counsel for the General Counsel that Favorito P. Banez, the complainant in this case, was not a union member at the time of his discharge on December 17, 1953, and for some period prior thereto.

Is that a correct statement, gentlemen, and do you so stipulate?

Mr. Collins: I am not exactly sure that we can enter into that stipulation, Mr. Examiner. I think we might phrase it this way. That we are willing to stipulate that on or about October 19, 1953, at the meeting that has been heretofore testified to, representations were made by the union to the company

(Testimony of Yasuki Arakaki.)

that this man was not a union employee, and to the best of our knowledge and belief that situation continued to the time of his discharge.

Mr. Karasick: I will accept the statement of counsel as the stipulation proposed instead of mine. Is that agreeable with you?

Mr. King: That's agreeable with me. [64]

Trial Examiner: All right. It is so stipulated.

* * * * *

CALEB E. S. BURNS, JR.

was thereupon called as a witness by and on behalf of the respondent employer, and being first duly sworn, was examined and testified as follows:

Direct Examination * * * * *

Q. (By Mr. Collins): What is your business or occupation? [65]

A. Manager of Olaa Sugar Company.

Q. How long have you occupied that position?

A. Since January, 1951. [66]

Mr. Collins: I now offer for identification a general map of the terrain of the Olaa Sugar Company, Limited, Puna, Hawaii, and ask that it be marked Exhibit 2-A. [67]

Trial Examiner: There being no objection, the document will be received for the same purpose as the others, and shall be marked Employer's Exhibit 2-A.

(The document referred to was marked Employer's Exhibit 2-A and was received in evidence.)

Q. (By Mr. Collins): Now, Mr. Burns, Exhibit

(Testimony of Caleb E. S. Burns, Jr.)

2-A bears the date down in the corner of 8-41. Does that substantially represent the plantation's sugar producing lands at the present time or in 1953?

A. Yes. Approximately so.

Q. There appears to be a railroad line starting at Hilo, running down to the mill camp, then spreading in the direction towards the Volcano, and also a line running down into the portion called Kapoho, with branch lines running off it. Does that railroad still exist? A. No, it does not.

Q. What is the status of the railroad?

A. The railroad has been eliminated as a means of hauling cane and sugar from the Olaa operation prior to my coming to Olaa.

Q. Is any of the property or the roadbed upon which the railroad formerly ran, is that being used by the plantation?

A. Yes, it is. A large part of the roadbed that was formerly railroad-bed is now used as roads for trucking of cane.

Q. Is it fair to say that all of the roadbed in the section [68] representing the fields outlined in green, that the roadbed running through those sections are presently roads?

A. Yes. That is true.

Q. And the roadbed that runs from the Kapoho section up to the Olaa mill is also a road, is that correct? A. That is correct. [69]

* * * * *

Q. Would you explain what the situation is

(Testimony of Caleb E. S. Burns, Jr.)

with respect to the lands that intervene between these various fields?

A. The lands that are between the areas which are in cultivation are largely lands made up of lava waste, some of them have some forest growth on them but in general they are not suited to agriculture, hence they have not been cultivated.

Q. Is it fair to say that to the extent that the soil conditions warrant it that these fields are as contiguous as possible? A. That is true.

Q. Now, you have said that the portions that are shaded represent planters cane. I believe we had a stipulation this morning, but I wonder if you have the figures right [72] there indicating how many planters there are furnishing sugar for your mill and also what the acreage of their cultivated land is?

A. We have 438 independent growers and they farm 6,911 acres.

Q. And how does that contrast with the holdings of the plantation?

A. The plantation farms 7,418 acres.

Q. I wonder if you would explain for the benefit of the Trial Examiner just what the operations of a sugar plantation are, speaking very generally?

A. Do you first wish the table of organization?

Q. No. I am referring to any sugar plantation.

A. The primary operation or the important part of any sugar plantation is, of course, the farming aspect of it, the growing, cultivation, fertilizing, weed control operation, connected with growing the

(Testimony of Caleb E. S. Burns, Jr.)

crop. Then the next step is the harvesting of the crop. And in terms of sequence of operation would be the transportation of the raw cane to the factory, at which time the cane is processed into, in our case, brown sugar and molasses. It requires the laundering of cane under some conditions. Actually, in 1953 we were not in that operation. Cane was brought into the mill, ground, or juice expressed, and the juice is then boiled, and from that process you get a sugar which, in our case, is brown sugar. It is not for [73] consumption but is shipped to the refinery in California. Most of it goes to the California refinery. The molasses is sold also on the Coast. There is a small amount sold locally, but general that is the plantation operation.

Q. When you speak of the "factory," you mean the mill? A. I mean the mill.

Q. It is true, is it not, that the product which emanates from the mill is not a commercial product in the sense it is sold on the wholesale or retail market?

A. That is true. Our brown sugar is sometimes, a part of our brown sugar output is sold on the New York market as raw sugar.

Q. Is the brown sugar that is manufactured, if I may use that term, out of your milling operations, the commercial brown sugar that we buy in the stores? A. No, it is not.

Q. Does it require a further refining process?

A. It does.

Q. And the white sugar?

(Testimony of Caleb E. S. Burns, Jr.)

A. That is also the result of further refining of the brown sugar.

Q. Which refining does not take place here?

A. That is correct.

Q. Now, you mentioned the fact that you have a large portion of the acreage from which you derive cane for your mill [74] being acreage that is cultivated by independent planters. Will you explain to the Trial Examiner just what the relationship is between the planters and the plantation and the general background of the relationship?

A. The relationship of grower to the company is apparently or apparently dates back to the start of the company in the early 1900s, 1901, 1902. Apparently the company encouraged its employees to grow sugar cane on the side, not only to aid them in increasing their own income but also to give the company more sugar cane to process. The relationship between the grower and the company changed during the years, of course, and during the period 1936 to about 1951 the growers were classified as adherent planters, a term used under the Sugar Act. In early 1951 their status was changed from that of adherent planter to one of an independent status. Under that change the grower actually assumed more the responsibilities of being an independent farmer. And that is the present relationship that we have with the grower.

Under the terms of our present agreement with them, cane or we take possession of the cane in the field. There are two types of contract. One, mechan-

(Testimony of Caleb E. S. Burns, Jr.)

ical, where we take possession of the cane at the moment harvesting takes place, and the hand-harvesting contract, where we take possession of the cane after it is cut and piled in the field.

Q. Has there been any factor over the years that has mitigated [75] against the plantation acquiring the land from these adherent or independent planters?

A. Yes. During the period of the adherent planter relationship one of the regulations that the Sugar Act operated under was that the ratio of administration to planters cane could not change. In other words, the company could not go on and increase its area under cultivation at the expense of the grower. So under the terms of the Sugar Act and the benefit payments which we obtain we were compelled to adhere to that sort of an arrangement. I do not think it is written in the Act but it is one of the administrative rulings that existed. Now, under the independent status of the growers, that specific rule does not appear. But, on the other hand, the land which we own and lease to growers, which makes up a fairly sizeable area of the planter land, on those lands we are specifically barred from taking them back into cultivation for our own purposes during the term of the lease that we have with the grower.

Q. What was the harvesting operation or the schedule or the plan that was followed in 1953 and prior years, so far as your company was concerned, if you can tell us very briefly?

(Testimony of Caleb E. S. Burns, Jr.)

A. The harvesting schedule is formulated each year on the basis primarily of age of crop. In other words, we attempt to keep our age of harvest at about 24 months. So consequently, fields that were harvested in 1951, in order 1, 2, 3, [76] will probably be harvested in 1953, in the same order. In other words, two years later they would come off in about the same order.

Planter and plantation fields were harvested on the same basis. That is, we attempted to keep about the same age of crop, not only for the planter but for the plantation. Consequently, harvest schedules set up early in the year were fairly well adhered to. We do make some changes in them, depending upon whether we want to plant certain fields, and so forth. But in general age is the main criteria for establishing our harvesting schedule.

Q. Is any agreement worked out with the individual planter as to when his crop will be harvested or is it a matter of general over-all scheduling of the operation?

A. It is a matter of general over-all harvesting operations that dictate whether planter A gets his cane cut now or some time later.

Q. But I am correct in assuming, am I, that approximately half of the cane land under cultivation at any particular time will be harvested within a given year? A. That is correct.

Q. Would you tell us now what method of harvesting was used in 1953?

A. In 1953 we were practically 100 percent hand

(Testimony of Caleb E. S. Burns, Jr.)

harvesting. By that I mean that all the cane, both planter and plantation, [77] that was harvested, was cut by hand, piled into piles, and then loaded into trucks.

The harvesting operation consisted of men going into the field with cane knives or machettes and cutting cane, throwing it into heap piles on cable slings, and that actually was the cutting or that phase of the harvesting operation. Men averaged slightly in excess of 5 tons, net tons, of cane per day. They cut the cane into piles that averaged about a ton and a quarter and cut the cane on slings, cable slings, so that after a pile of cane was cut on two slings, then they just cinched up the two ends of the slings and had a bundle there. That was the primary part of the cutting phase of the harvesting operation.

Then the next step was the loading part of it, where traveling cranes came along and had a long cable and either through the use of manpower or a little power tractor, this hook was dragged to the bundles of cane and then the loading machine in turn dragged these bundles back to the roadside and loaded them into the trucks, which were waiting at the time the loading operation was taking place.

Q. When you speak of roadside, do you mean public roads or plantation roads?

A. No. Plantation roads. I may say this: that Olaa Sugar Company has about 340 odd miles of roadway of its own, and there is about 106 miles of roadway which is in planter areas, [78] over which

(Testimony of Caleb E. S. Burns, Jr.)

we have the right to go and come. Or a total of about 450 miles of roadway in the 14,300 acres of cane land.

Now, the harvesting operation is such that all of the cane is loaded on these plantation field roads. None of the cane is loaded on public highway.

Q. The roads that you speak of, are they shown on either Exhibit 2-A or on Exhibit 3?

A. On Exhibit 2-A about the only roads that are shown are the old railroad-bed, from which the rails have been picked up.

Q. Are any of the public roads charted on that map?

A. Yes. The public roads are in general the dark blue lines which go through the area.

Q. Then, would it be correct to say that all roads shown on Exhibit 2-A are public roads with the exception of roads that may have been converted from the old roadbed? A. Yes.

Q. Are these thinner line roads in the Olaa section public roads or plantation roads?

A. No. I am sorry. I would hesitate to say that all of those are public roads. Just looking at this, it looks as though one of these smaller blue lines might be a land ownership division. I think that the dark blue lines here certainly show the public highway. The old railroad lines are now plantation roads, with the exception of the railroad line that [79] goes to Hilo. That we do not use. But if we refer to 3-A, the public roads are shown, as well as are the plantation roads. And the maze of lines in here are

(Testimony of Caleb E. S. Burns, Jr.)

most all of them plantation roadways. It would be possible to show the Territory or County roads very easily on this map.

Q. Would you explain what the internal organization of your plantation is, as far as operational activity is concerned?

A. The organization of the plantation is made up of a manager, an assistant manager, which in our case also has under him certain departments. Our assistant manager has under his direct supervision the industrial engineering, industrial relations, the office, construction, and medical departments. Those are departments which report directly to him. In addition, we have a field superintendent, who is also under the assistant manager but nonetheless has department heads reporting to him.

Under the field superintendent is the harvesting department. Actually, under the harvesting department is where the transportation section falls.

The cultivation department, agriculture research, and one other service department, I believe it is the garage.

Then we have a factory superintendent. Under the factory superintendent is the entire mill operation.

That sort of gives you a picture of the organization.

Q. So that if we may summarize, you have a field operation, [80] a milling operation, and a third, which would be assorted services?

(Testimony of Caleb E. S. Burns, Jr.)

A. That is right. A combination of service departments.

Q. And if I understand your testimony correctly, the actual transportation of the harvested cane from the field to the mill is in your organization under a field superintendent?

A. That is correct.

Q. Now, could you give us any approximation of the distances that are involved in going from the fields to your mill? You have only one mill, is that correct?

A. That is correct.

Q. And would you locate that on Exhibit 2?

A. The mill is located in the lower area of the block which is the first block you run into on leaving Hilo, on the main Volcano road. The Olaa Village is shown on 2-A and the mill is very close to it.

Q. The green that has been drawn around the Olaa area appears to encompass the location where the mill is situated; does that mean that you have fields around your mill?

A. We have fields right around our mill; as a matter of fact, some of our fields, field boundaries, are the mill yard boundaries.

Q. Would you give us the approximate distances involved in, let us say, bringing the cane from the most remote point in the Olaa sector to the mill. Approximately how great is [81] the distance there?

A. It would be in the neighborhood of 12 miles one way.

Q. To Pahoehoe?

(Testimony of Caleb E. S. Burns, Jr.)

A. I am speaking now of the longest distance.

Q. Yes.

A. I am not speaking of the center of the locations now.

Q. Yes.

A. I presume the Pahoa area would be 12 or 14 miles.

Q. And going down farther, the assorted fields down there?

A. Actually, in the area shown on 2-A is Kamaili, Malama, in the lower area there. That is our longest haul. We actually have a 23-mile one-way haul in there. [82]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Karasick): Is it one building or more than one building? The mill proper?

A. The mill proper is one building.

Q. I see. Does it have appurtenant buildings that supply the mill with power, or anything else?

A. No. There is one very small building that is used as a welding shop, something like that, but that is very small.

Q. What is the total number of persons employed at the mill proper, as distinguished from operations in the field? [84]

* * * * *

Mr. Karasick: I think counsel is right and I will be glad to accept his suggestion. In these questions, then, should I inadvertently fail to mention it, Mr. Burns, will you keep in mind that I am referring to

(Testimony of Caleb E. S. Burns, Jr.)

the time of Banez's discharge in December 1953.

Q. (By Mr. Karasick): Now, with that in mind, can you give us the approximate total number of persons employed at the mill itself?

* * * * *

A. Approximately 170.

Q. (By Mr. Karasick): That included everyone, office employees, everyone else? [85]

A. No. That is strictly in the factory or milling operation and the service operations associated with the running of the mill.

Q. There are certain office procedures, I suppose, and office employees engaged in those procedures that are connected with mill operations; right?

A. Our general office procedure or office personnel handles all the office work. We have, as I recall, one clerk or timekeeper in the mill, who takes care of the mill end of it. We have a warehouse setup, of course, which is different again. I am speaking now strictly of the number of people involved in the milling operation and the mechanics and so forth associated with that.

Q. What we normally refer to in Board proceedings perhaps as maintenance employees, is that right?

A. I would presume so.

Q. Is that a fairly descriptive term?

A. I think so.

Q. Can you give us, then, the over-all total of all employees who would be engaged in work connected

(Testimony of Caleb E. S. Burns, Jr.)

with the mill, Mr. Burns, including field—other than field employees?

A. That is the figure I gave you. 170.

Q. I see. What sum of money would represent the valuation of the mill as of December 1953?

A. We had an insurance study made of the factory, and asked for an appraisal on the basis of building a new factory, [86] and as I recall that figure was somewhere between six and \$7,000,000. On the other hand, I think our mill stands us on our books now at about \$1,200,000, somewhere in that area.

Q. I take it that what you are saying is that the replacement value of the mill today, as of apparently December of last year——

A. Yes.

Q. ——is approximately between \$6,000,000 and \$7,000,000?

A. That is correct.

* * * * *

Q. (By Mr. Karasick): Mr. Burns, you have corrected me to point out that there are 26 sugar mills located within the Territory of Hawaii, on the various islands of the Territory, [87] is that right?

A. That is correct.

Q. In our off-the-record discussion I think you pointed out to me that there are two plantations in the Territory that merely grow and produce the sugar cane but have the cane milled for them by some other company, is that right?

A. That is correct.

Q. What was the figure of total raw sugar produced by Olaa in 1953; do you have that figure?

(Testimony of Caleb E. S. Burns, Jr.)

A. The total production is 53,966, I believe. I have the actual figure here. The total production in 1953 was 55,967 tons of 96 degree sugar.

Q. You will have to bear with me, I am afraid, for my ignorance. Will you be good enough to explain to me and for the record what 96 degree sugar means?

A. 96 degree sugar is the purity of sugar. In other words, if it were 100 degrees, it would be absolutely pure sucrose, but we market a raw sugar and we calculate it back in terms of 96 degree sugar. So it is 96 percent of 100 percent, but you don't get 100 percent in any kind of white sugar either. But that is the ultimate.

Q. I see. Now this 55,967 represents tons, is that it?

A. Tons. Short tons. 2,000 pound tons.

Q. In total raw sugar production of the 26 mills of the Territory. Olaa stands where? Approximately sixth? [88]

A. About sixth. That is correct.

* * * * *

Q. (By Mr. Karasick): Mr. Burns, I think you have already indicated for the record the total sugar production of the respondent employer for the year 1953. May I ask you at this time what the total molasses production was for this same period of time?

A. I do not have the exact figure but it would run about a fourth of the sugar production in terms of tons of molasses.

Q. You testified previously with respect to the

(Testimony of Caleb E. S. Burns, Jr.)

independent growers who cultivate sugar cane which in turn is used by the company in processing sugar and becomes part of its total production, is that correct? A. That is correct.

Q. I hand you at this time a series of documents entitled variously "independent Grower's Agreement," which I have asked the reporter to mark as General Counsel's Exhibit 17-A for identification, stapled to which are the following: A [89] mimeographed document of 3 pages entitled "Olaa Sugar Company, Ltd. Temporary amendment to Independent Grower's Agreement," which I have asked the reporter to mark General Counsel's Exhibit 17-B for identification; a single printed sheet of green paper, printed on both sides, bearing the caption "Olaa Sugar Company, Ltd. Amendment to Independent Grower Agreement," which I have asked the reporter to mark General Counsel's Exhibit 17-C for identification; and, finally, a single sheet of white paper which bears the caption "Olaa Sugar Company, Ltd. Second Amendment to Independent Grower Agreement," all of which is in printing, which I have asked the reporter to mark as General Counsel's Exhibit 17-D for identification.

I now hand you these documents, Mr. Burns, and ask you if they represent the independent grower's agreement which were in force and effect between the Olaa Sugar Company and various independent growers during the year 1953?

A. Exhibit 17-A was in effect; 18-B was not in effect in 1953.

(Testimony of Caleb E. S. Burns, Jr.)

Q. Is it as of the present date? A. It is.

Q. For the year 1954 it has been in effect?

A. Yes. Actually, this was negotiated in 1953 but was not approved by the Department of Agriculture until 1954.

Q. With respect to the remaining two documents, were they in force and effect during the year 1953? [90]

* * * * *

A. Exhibit 17-C was in effect but 17-D was not.

Q. (By Mr. Karasick): Is Exhibit 17-D presently in effect? A. Yes, it is.

Q. How long has it been in effect?

A. Since January 1954.

Mr. Karasick: I offer these documents in evidence as General Counsel's Exhibits 17-A through D, inclusive.

Trial Examiner: Any objection?

Mr. Collins: No objection.

Mr. King: No objection.

Trial Examiner: There being no objection, the documents are received and shall be marked General Counsel's Exhibits 17-A through D, inclusive.

(The documents referred to were marked General Counsel's Exhibits 17-A, B, C, D, and were received in evidence.)

[See pages 302-306.]

Q. (By Mr. Karasick): Do I understand correctly, Mr. Burns, that the independent growers have title to their own land?

(Testimony of Caleb E. S. Burns, Jr.)

A. They have control of their own land; that is correct. [91]

Q. I am not so much interested in absolutes here as I am in the fact. The company does not control the ownership of the land on which the sugar cane is grown by these independent growers, is that right? A. I don't quite understand.

Q. Let me withdraw that question, then. Does the company own any of the land on which the independent growers grow sugar cane?

A. Yes, it does.

Q. And as to that land so owned, does the company lease it on a term of years to the growers?

A. That is correct.

Q. Is there a stipulated term of years normally followed? A. Yes.

Q. What is the normal period that the land is leased by the company to an independent grower?

A. Fifteen years is the term of the lease.

Q. Do you know offhand what approximate percentage of the total 6900 acres of independent grower's land represents land which is leased to the growers by the company? If not in percentage, then how much of the land?

A. I think approximately twenty-four- or 2500 acres is company owned land.

Q. And the rest is land owned by others than the company? A. That is correct. [92]

Q. The contract between the independent grower and the company to grow cane for the company is usually for a period of five years, is that correct?

(Testimony of Caleb E. S. Burns, Jr.)

A. No. The contracts are crop to crop, cane purchase agreements.

Q. I see. So then they are about 24-month contracts?

A. Approximately that, or crop to crop, depending on the age of the crop.

Q. I see. The independent grower pays for the seed cane, does he not? A. That is correct.

Q. He pays for the irrigation?

A. We do not have to irrigate.

Q. You don't have to? A. No.

Q. He pays for the cultivation services furnished by the company?

A. The company furnishes—I may say this. At Olaa the growers do practically all of their own cultivation. They do that work themselves.

Q. Are there some growers, however, who do not do their own cultivation, for which the company furnishes such service?

A. Our furnishing of services to planters is on such a small basis that there are no growers who depend upon us to do their work. It is only in an unusual circumstance that we [93] do any cultivation.

Q. So practically speaking, the company neither offers cultivation or irrigation services; that is taken care of by the independent growers, is that right? A. That is correct.

Q. And I think you have explained previously that there are two types of agreement as to harvesting: One, where the company does the harvesting,

(Testimony of Caleb E. S. Burns, Jr.)

and if I understood correctly, the other where the independent grower does the harvesting?

A. No. In 1953 the only harvesting that was done was done by hand. And the cutting and piling of cane was paid for by the grower, but we did that work.

Q. In other words, the company furnished the labor for the cutting of the cane and charged the proportion of that labor cost to the independent grower, as was represented by his cane production?

A. The entire cost of harvesting planter A's cane was borne by planter A.

Q. But the labor was furnished by the company through its own labor force, is that correct?

A. That is correct.

Q. And that consisted of the cane cutters and the truck employees that transported the cane—Well, the cane cutters only, wouldn't it?

A. That is correct. [94]

Q. And from that point on it became a company problem to transport it to the mill?

A. That is right.

Q. Is it correct that in all five fields which are shown on Employer's Exhibit 2-A the independent growers' fields and the company fields are intermingled, that is, there will be some independent growers' fields which will be in the midst of company fields, and vice versa?

A. That is correct.

Q. In other words, there is no solid block where all of the land for a great period is the company's

(Testimony of Caleb E. S. Burns, Jr.)

and all of the land, the rest of the land, is the growers'; there are places where the two are contiguous and the sections are broken up between them, is that right?

A. Yes, that is true. But in general company fields would average more than 60 acres per field. In other words, there would not be small 5 or 6 acre blocks of company land and planter land mingled up.

Q. Would that be true of the independent growers' land or would that vary? I am speaking of generally speaking.

A. We have 438 independent growers and they farm 6,900 acres, I believe it is. So you vary in size of independent grower holdings from an acre to 200 acres. But in general they average 12 or 15 acres. Probably closer to 10 acres, actually. [95]

* * * * *

Q. (By Mr. Karasick): Mr. Burns, I think in tracing the history of the independent grower, you indicated that former employees were encouraged to grow sugar cane. I think there might be an impression left in the record that seems to me to be not quite accurate, and I want to ask you this. All of the independent growers at the present time are not former employees of the company, are they?

A. No.

Q. Are some of them, do you know?

A. Some of them are employees now.

Q. Are employees now. A. That is correct.

Q. And some of them are not in any way, nor

(Testimony of Caleb E. S. Burns, Jr.)

have they ever been in any way, connected with the company, is that right? A. Yes.

Q. I believe you testified previously that by provisions of the contract with the independent grower, the company is barred from taking the land back, at least during the period of the lease with the grower. Is that correct?

A. That is right.

Q. That is as to land that the company holds title to, is that right? [97] A. That is right.

Q. So that certainly, to that extent at least, the independent grower is independent thoroughly of the company, is that right? A. Yes.

* * * * *

Q. (By Mr. Karasick): Now, Mr. Burns, I think you testified that there are about 340 miles of roadway of the company and [98] in addition 106 miles over independent growers' areas, over which you have right-of-way. A. That is right.

Q. These are roads which the company cuts approximately every 600 feet into the field to assist in the harvesting and transporting of the cane to the mill at harvest time, is that not correct?

A. That is right.

Q. Now, in addition to that, I think you indicated that the cane is loaded on these roads that are cut into the fields? A. That is right.

Q. They are not loaded on public highways, is that right? A. That is right.

Q. That would create, I suppose, a transportation problem during harvest times if the trucks

(Testimony of Caleb E. S. Burns, Jr.)

were to load from the sides of the road bearing on public highway, is that right?

A. That is correct.

Q. And there are fields which bear directly or join directly the public highway, is that right?

A. That is right. The public highways go through large areas of our cane lands. [99]

* * * * *

Q. (By Mr. Karasick): Directing your attention, Mr. Burns, to Employer's Exhibit 2-A. From the farthest extremity of any land which the company either owns and cultivates or which it secures cane from independent growers, how far would it be by public road to the mill? In other words, how far at the farthest could you go from the Olaa mill to the outermost point of fields either owned by the company or from which the company secures sugar cane, remaining on public roads?

A. Approximately 23 miles.

Q. That would be in the straightest line, I take it?

A. It would be on roadways which would allow us to haul cane on.

Q. Yes. A. Yes.

Q. And a cane truck driver might at a point some 23 miles away from the mill pick up cane and by reason of routing take a trip longer than 23 miles before he reached the Olaa mill?

A. No. That is just about the maximum.

Q. About the maximum?

A. That is correct.

(Testimony of Caleb E. S. Burns, Jr.)

Q. Now, the truck drivers at the company in 1953 were [101] under the supervision of a truck dispatcher, is that correct?

A. That is correct.

Q. And that truck dispatcher supervised only truck drivers, no other classifications of employees, is that correct?

A. I think that is true in 1953. [102]

* * * * *

GEORGE MAIR

was called as a witness by and on behalf of Respondent Employer, and being first duly sworn, was examined and testified as follows: [106]

* * * * *

Direct Examination * * * * *

Q. (By Mr. Collins): And what is your business or occupation, Mr. Mair?

A. Harvesting superintendent, Olaa Sugar Company.

Q. How long have you occupied that position?

A. Slightly over 3 years, about 3 years and 2 months.

Q. How long have you been with the company?

A. A little over 28 years.

Q. Has most of your time with the company been in the harvesting aspect of the operation?

A. I would call it the production aspect; in transportation for a great part of the time.

Q. For how long have you actually been in harvesting operations?

A. Slightly over 3 years.

(Testimony of George Mair.)

Q. Does the senior cane truck driver at Olaa plantation come within your jurisdiction?

A. That is correct.

Q. I show you a paper described "Job description. Olaa Sugar Company. Job title: Senior cane truck driver." And ask you whether that constitutes a description of the work of the senior cane truck driver at the plantation? [107]

A. Yes, I am familiar with this document.

Trial Examiner: It was stated here by someone that this Banez was a truck driver or cane truck driver. What was his position at the time of his discharge?

Mr. Collins: The official classification is "senior cane truck driver." [108]

* * * * *

Q. (By Mr. Collins): Mr. Mair, this document which has been marked for identification Respondent Employer's Exhibit 5, bears the date of June 9, 1952. Does that document contain a description of the job in question for the year 1953?

A. It does.

Q. There have not been any material changes in in the content of the job since June 1952 and up until December 1953?

A. That is correct.

Mr. Collins: I now offer it in evidence.

Mr. Karasick: No objection.

Trial Examiner: The document will be received and shall be marked the Employer's Exhibit No. 5 in evidence.

(Testimony of George Mair.)

(The document referred to was marked Employer's Exhibit No. 5 and was received in evidence.)

[See page 307.]

Q. (By Mr. Collins): Mr. Mair, who prepared this job description?

A. It originates with the immediate supervisor, who is the control dispatcher. Then it is checked by the industrial [109] relations department. If I may also add, with their assistance. And as head of the department, I approve it.

Q. Are these your initials down at the bottom?

A. That was the initial of the industrial relations director.

Q. I see. Now, I wonder if you would give us a general description of the way in which the sugar cane is harvested in the field?

A. The hand harvesting operation at Olaa was in 1953 divided into three groups, of approximately 120 to 130 men each, located in three different sections of the plantation. That is Mountain View, Olaa, and Puna. Each of these three sections was under the supervision of a harvesting overseer; he in turn had four or five gangs, consisting of approximately 30 or 35 men each. These gangs were transported to the field in the morning at starting time and disbursed along the field roads, which are approximately five- to 600 feet apart. The lines of growing or mature cane may be burned then or may have been burned the previous day prior to harvest.

Each man is assigned by his immediate super-

(Testimony of George Mair.)

visor five lines each, or a distance of 25 feet per man, as the lines are five feet apart. A sling distributor, truck-tractor, comes along and issues a number of slings to each cutter. These slings consist of quarter inch wire cable, 25 feet long, with a hook on each end. The individual cutter then gets a couple [110] of the slings and hauls them into the cane for a distance of approximately 20 or 30 feet. He then proceeds to cut the cane, all five lines, and deposits the sticks of cane which he cuts and tops onto these slings, to the end that he shall build a pile of approximately one and a quarter tons.

Q. Each man has his own pile?

A. Each man has his own pile and each pile will retain their identification for purpose of payment. When the pile has reached what in his estimation is one and a quarter tons, it should then be around 11 feet long and possibly around 4 feet high, maybe around 5 or 6 feet wide. If the cane stick is too long to meet these requirements, then he will possibly cut it in half and overlap them on the sling.

When the pile has what he considers reached the correct size, he will throw the slings on top, then engage the hooks, and that's that.

Then the next step is that he installs an identification mark on that pile of cane. The identification mark will consist of one, two, or three sticks of cane, with possibly a cane top leaf, as a marker. That is his identification mark for that pile of cane.

He then proceeds to the next step and repeats the performance across the field until quitting time or

(Testimony of George Mair.)

until he meets his neighbor coming from the opposite side of the road, in which case they will pick a fresh section. [111]

That pile of cane then remains until the loading operation commences. The loading operation, depending on the field supply, may take place immediately or it may take place during the night or even as much as 48 hours later that pile of cane may lie in the field.

However, the next step in harvesting is when the traveling crane comes along just inside the road. In other words, he is traveling in the field just off the road. And latches on to these piles of cane. This crane, of course, is attended by a truck which is traveling along the road waiting to be loaded. If the pile is close by, then two of what we call the ground crew or loading crew grab hold of the drag line from the crane, attach it to the hook, which the cutter has left open there, hoists that on board the truck.

When the bundles are farther away from the road, then the drag line is pulled back by a Fordson winch, a winch-equipped Fordson. The pile is then dragged, it may be as much as a maximum 300 feet, to the truck, loaded into the truck. The trucks we had in 1953 consisted of a semi-trailer and a full trailer with two compartments in each. They carried a total of from 16 to 18 of these piles, making a pay load of approximately 22 tons.

The loading crew on the crane is also in charge of a supervisor known as a loading foreman. He sits in

(Testimony of George Mair.)

the cab of the crane and he records the identification marks of the [112] cutters and gets an approximate weight from a recording unit.

When the loading operation is completed he hands these pieces of paper, what we call our weight slips, to the truck driver, the truck driver then proceeds on his way to the mill.

When the truck arrives at the mill, it is weighed on a Printomatic scale by the control dispatcher. The truck then proceeds to the nearest point of the cane carrier, where the truck is unloaded by slings, which are already in the truck, unloaded by a hammerhead crane. We call it an American crane.

That finishes the operation.

Q. Now, is the harvesting operation the same on plantation fields and planter fields?

A. Exactly.

Q. You say that when the cane is cut and deposited in the field on the sling, it is dragged from there to the roadside by the loading machine. Is that correct?

A. That's correct.

Q. Are your roads in the field so located that you can do that in the harvesting of any field?

A. Yes.

Q. What is the maximum distance between your field roads, do you know?

A. The maximum distance is in no case over 600 feet.

Q. And what is the average distance?

A. Slightly under 500; possibly 480 or 490. [113]

Q. If the field was being worked adjacent to a

(Testimony of George Mair.)

public road, will the loading take place on the public road or on the shoulder of the public road?

A. I tried to do that last year and the Territorial officials would not allow me to load on the public road. There are some possibilities that we could do just a little bit of it on the county roads but we very rarely have to. That is, our plantation roads are adequate in most cases.

* * * * *

Q. (By Trial Examiner Doyle): Is this a year round process that goes on, week by week, the year round? A. Yes.

Q. Harvesting?

A. We would like to have it nine months but we can't do it, haven't been able to do it for some years. It has been practically eleven months, with a brief shutdown period for mill overhaul and equipment overhaul.

Q. (By Mr. Collins): Is that due to the overhaul of your equipment or the mill equipment?

A. Both. [114]

Q. Do you recall for the year 1953 when the harvesting season started, your harvesting season started?

A. Yes; it was the first week in January.

Q. And when did it conclude?

A. Around the 17th of December; just before Christmas.

Q. And between those two dates it was a continuous process? A. That is correct.

Q. Does this harvesting operation, that is to say,

(Testimony of George Mair.)

the transportation of the cane that is cut, does that go around the clock or is it on daylight shifts?

A. Round the clock.

Q. How about the actual cutting of the cane?

A. Day shift only, 8 hours elapsed time.

Q. But enough cane is cut during the 8 hours to warrant the transportation on a 24-hour basis, is that right?

A. That is correct.

Q. I believe I asked you a question which is within your jurisdiction. The harvesting and the transportation of the sugar cane in these various sectors shown on Exhibit 2-A is all within your jurisdiction, is that correct?

A. That is correct. [115]

* * * * *

Q. (By Mr. Collins): Do you have any general pattern that is followed in connection with the routing of trucks in the harvesting of the various sectors?

A. Yes, we do have a predetermined practice.

Q. How are the trucks controlled?

A. They are controlled directly by the truck dispatcher. The routing of the trucks for a day, a shift, weight, is done by him by making up his schedule, which is posted each Saturday morning at a designated point, for the information of the truck drivers for the coming week. In other words, they know what their run is for the coming week.

Q. Does this schedule route the roads that they are to take?

(Testimony of George Mair.)

A. No, it does not. Simply where they are going, which section, which field, for the coming week.

Q. Are there any directions given to the truck drivers as [116] to what routes should be followed in working these various fields?

A. Yes, they are. They are given directly when the truck leaves the mill, leaves what we call the dispatcher's control shack.

Q. Are there any road markers, signs, lights, or anything similar, utilized for the same purpose?

A. Both. When the dispatcher gives an instruction to a driver, "Go to section so and so, road so and so, follow the arrows," the arrows and markers are placed by the Government roads leading into field roads.

Q. And do those markers or arrows or directions given indicate precisely what roads are to be taken to get to the field and what roads are to be taken to get from the field to the mill?

A. Yes, they do.

Q. In all instances are the, if we may use the term, in roads or the roads to the field and the out roads, the road to the mill, are they identical? That is to say, is it customary to go into the field and go out of the field on the same road?

A. Yes, usually.

Q. Will you refer to my earlier question? Taking Exhibit 2-A, will you indicate in general what the routing pattern is in working the various fields in the various sectors? [117]

A. It will take quite a while. O.K.

(Testimony of George Mair.)

Q. Let's start with the most remote one.

A. O.K. This marked here "Kaueleau" is our most remote. The truck would leave the mill and hit the Government road here.

Q. By "The Government road" you are referring to what road?

A. The dark blue line, right here.

Q. That is the one——

A. That is the one known as the Puna road.

Q. Puna road.

A. Hit the village of Pahoa and there we have a point known as the Kalapana Junction; then they take a secondary road, then we hit another point known as the Kamaili Junction. We go down there through the Kamaili cane until they hit this section here.

Q. By "This section" you are referring to what one, as designated?

A. Kaueleau. Do you want to break it down or——

Q. No. Let's talk just generally for a moment.

A. O.K. When he hits this point here, the driver will see an arrow.

Q. That is the point——

A. Still on the Government road.

Q. ——where the Kalapana road is joined by the road that goes to the Kaueleau, Kauaea, and Malama fields, is that correct? [118]

A. That is right. Then you will have an arrow here, and then you will have an intersection on the way down and there will be an arrow for his guid-

(Testimony of George Mair.)

ance. When he hits this point, there will be possibly several field roads adjoining this. This is still the Government road. The location, the exact location he is to go to, will be designated then by arrows.

Q. That is on the field roads?

A. On the field roads.

Q. By following these arrows onto the field roads, he hits the spot where the cane is actually to be loaded upon his truck. Now, is it customary for him to take the same road out, the same field road and the same public road?

A. No, it is not customary in that case. Our roads are all one-way roads and we try to avoid having trucks meet.

Q. Does that apply only with respect to your field roads or does it apply to your main highways as well?

A. We would like it to apply to main highways but we can't. The modern highway is usually wide enough for trucks meeting and passing; our field roads are not.

Q. When you are working those fields, do you make use of the road that formerly constituted the roadbed of the old railroad?

A. Not in this particular occasion, but when we go down to this point, which is known as lower Pahoa, when we go——

Q. That is Pahoa Village, is it?

A. When we go below Pahoa Village, yes, we would use that [119] road because that's downhill and it's a faster run. Then we will use this old rail-

(Testimony of George Mair.)

road. Then when we come down to the bottom of Kapoho, we will do the same thing, because this is a climb. Although this is a better road, it is a climb, and the elapsed time getting the load to the mill will be much faster by using the old railroad bed.

Q. So that you go down on the main highway and back on the old railroad bed, is that correct?

A. Correct.

Q. That is, where the fields are close to them?

A. That is right.

Q. What is the situation with respect to the Olaa-Mountain View area?

A. In nearly all cases we will go up the main road, the Government road. [120]

* * * * *

Q. (By Mr. Collins): I refer you now to Exhibit 3-A. I call your attention to the location of the mill and ask you whether in the harvesting of the fields adjacent to the mill, and I am referring now to the fields bearing these designations [121] on that exhibit, Field L, field K, field E, fields F and I, field G, field H, field C, C-2 and C-3, whether it is in conformity with your general routing practices to use any of the public roads at all.

A. In those fields we don't need them.

Q. And you do not use them; is that correct?

A. We don't use them. We may have to cross them, but that would be all. Not more than 20 feet.

Q. Let us get into the area now that involves fields Q, T, O, D, and J-2. To what extent would you be using the public roads on those fields?

(Testimony of George Mair.)

A. Possibly 10 percent of the mileage.

* * * * *

Q. (By Mr. Collins): As you get up into the Mountain View section—First, may I ask you, When Mountain View is referred to on Exhibit 3-A, where is that located on 3-A?

A. There is a dotted line marking the 13 Mile road. Approximately from then on out to the extreme left of the map is what we call Mountain View.

Q. When you are working the Mountain View section, do you use the public roads in harvesting that?

A. Yes, we do, for empty trucks going up. Field roads to [122] reach inside to whatever field we may happen to be harvesting in. Then we try to get back to the main road as quickly as possible. We usually come down about a couple of miles before we get back to it.

Q. Now, Mr. Mair,—

Mr. Karasick: I understand, Mr. Examiner, it is understood between counsel that the main road here as used by the witness refers to public road, as distinguished from the company road.

Mr. Collins: That is the Volcano Road there.

Trial Examiner: All right, it is so understood.

Q. (By Mr. Collins): Now, Mr. Mair, what sort of control do you have over your truck movements; is there any system of recording where the trucks are, when they arrive at what places, and so forth?

A. Yes, there is. We do it by radiotelephone.

(Testimony of George Mair.)

Q. Will you explain of just what that reporting consists, taking a movement of a truck from the mill to the field and back to the mill again.

A. When the truck is dispatched, he leaves the dispatch control shack.

Q. Where is that located?

A. That's located right in the mill yard. Proceeds to the field under instruction, follows the arrows to the traveling crane. When that truck reaches the field, the loading foreman, [123] who has a radio-telephone in the cab of the crane, reports to the dispatcher, "Truck Number so and so arrived in field." If there is no truck ahead of him, he will say, "Truck Number so and so arrived in field at 1:15, commenced loading 1:15." If there is a delay, "Commenced loading 1:20" or "1:25." As the case may be.

Q. From the telephone in the crane you get the information as to when the truck arrives and when the truck loading commences, is that correct?

A. That's correct. The next step in the reporting is when the truck is loaded and leaves, by the loading foreman to the dispatcher.

Q. And is there any further reporting on the way back?

A. It is usually not necessary unless there is a flat tire or some other unforeseen incident.

Q. Do you know whether records are kept by the truck dispatcher as to the various times of arrival and departure from the field and the time when the

(Testimony of George Mair.)

loading commences and is completed in the field on the various trucks?

A. We do have some such system. It is known as the truck dispatcher's log. All times are noted therein.

Q. Mr. Mair, I wonder if you could give us an estimate as to the amount of time that is required to complete a circuit of a loaded and unloaded truck from the mill to the field to the mill again from the various sectors that might be worked? [124] Let us start again with section that is the farthest remote. How do you pronounce it?

A. Kamaili, Kaualeau, Kauaea, Malama.

Q. That is it. Approximately how long does it take a truck from the time it leaves the mill, hits the field, and returns to the mill?

A. In the case of the extreme point, two and a half to three hours. The entire operation.

Q. What do you figure to be the normal running time with a full load of cane from that section back to the mill?

A. From that point in 1953 it took about an hour and a quarter to an hour and 40 minutes to make the run in. About 50 minutes to an hour going out.

Q. How about the Kapoho section?

A. That is quite comparable. It is almost the same, although the distance is slightly shorter. The route is harder if we use this road.

Q. By that road you are referring——

A. If we use the railroad, it is much less.

(Testimony of George Mair.)

Q. What would be the running time from Pahoa?

A. In both cases, upper and lower Pahoa, it would run from 55 to 60 minutes one way.

Q. And from the Mountain View section?

A. The Mountain View section, it would be less than that. Mountain View. An empty truck would hit the field in 25 to [125] 30 minutes. Return time about the same. Loading may take anywhere from half an hour to an hour.

Q. You say that all of the loading of the trucks takes place in the fields, that is to say, on the field road?

A. On the field road.

Q. From a glance at these maps it would appear that some of the fields are quite remote from the roads, that is from public roads, whereas others are adjacent to them. From your experience would you be able to give us any estimate as to—First of all, may I ask you, Can the trucks travel as fast on the plantation roads as they can on the public roads?

A. No, they can't.

Q. That is, the field roads?

A. No, they cannot.

Q. Could you give us any estimate as to about what the average time would be to run on the field road from the field to a public highway?

A. I will say a minimum of 5 minutes to possibly a maximum of 35 to 40, in extreme cases. These are two extremes.

Q. Yes. And the average would fall some place between those two figures, I take it?

(Testimony of George Mair.)

A. Right.

Q. Do your senior cane truck drivers normally operate any other trucks than cane trucks?

A. No. [126]

Q. How do you fill positions that may become vacant, as far as senior cane truck drivers are concerned?

A. When a vacancy occurs I am notified by the immediate supervisor of that department, who is the control dispatcher, that such vacancy exists. We have provision in our organization, the mechanics of which are an application form for additional personnel. This is filled out by the immediate supervisor, approved by myself, sent to the field superintendent, to the manager, to industrial relations for checking, then it is posted, conspicuously posted at various locations on the plantation that such job vacancy exists. It is posted for a certain length of time, at least a week, and all applications are considered as they are submitted.

Q. You mean applications from existing plantation personnel, is that correct?

A. From existing plantation personnel.

Q. And then what happens?

A. Then the driver is selected on the basis of ability, with due consideration given to seniority and all other relevant factors.

Q. And to the extent that you have personnel available on the plantation that may be able to fill the vacancy, that is the way it is filled, is that correct?

A. Yes.

(Testimony of George Mair.)

Q. You don't go off the plantation and get somebody as [127] long as somebody on the plantation can handle the job, is that correct?

A. That is correct.

Q. I notice in the job description that there is a term "Tomanaga hooks" under No. 5 beneath the caption "Work Performed." For the purpose of the record, would you explain what a Tomonaga hook is?

A. Tomonaga is the name of the man who invented those hooks, several years ago. It is a device attached to the end of a tag line or guide line which is put to the sling, clipped to the sling while the bundle is being hoisted from the ground to the truck. When the bundle is lowered into the truck it goes over the side and down out of sight and by a pull on the rope or the manila tag line these hooks relieve the big sling from the bundle of cane and are dragged out by the cane load.

Q. You are not referring to the slings that are used in the field? A. No.

Q. Where are these slings located?

A. The slings during this operation are around the bundle of cane.

Q. Well, they are not in the field; where are they?

A. They're around a bundle of cane.

Q. Where?

A. They were in the field until we started dragging them; [128] Then the ground crew attaches the Tomonaga hooks to the sling. The Tomonaga

(Testimony of George Mair.)

hooks are attached to a long rope line, thin rope, then are hoisted into the air, deposited into the truck, drop down into the correct position, the ground crewman then pulls this light line, the Tomonaga hooks are then automatically released from the slings which are around the bundle inside the truck.

* * * * *

Q. (By Mr. Collins): But this hook is attached to the sling that is used in the field, is that correct?

A. It is attached by the ground crewman during the—prior to the hoisting operation.

Q. When the sling is hooked up in the field, the Tomonaga [129] hook is not used at that time?

A. Oh, no.

Q. At what point does the Tomonaga hook come in contact with that sling?

A. Immediately prior to hooking on by the crane. After the dragging operation is completed, it is dragged to the roadside, the ground crew stands there. This Tomonaga hook with the rope attached is the only tool that he uses. This is a tool to be used as a tag line or a guide line to the bundle while it is in transit. Then it becomes an automatic release for the slings, which are now inside the truck. If you follow the operation.

Mr. Collins: No further questions.

Q. (By Trial Examiner Doyle): What kind of truck—You told us that you had trucks that the men drove, with a cab and trailer arrangement—are they?

(Testimony of George Mair.)

A. We have a truck tractor, semi-trailer, plus a full trailer. A train of three pieces.

Q. How big, what is the horsepower of these cabs, the tractor, how big a truck is this? Diesel?

A. We had 15 White gasoline trucks then and 6 GMC diesel trucks. The horsepower I am not sure of. I know they were 64 feet long overall, the frame, around 12 feet high, and 8 feet wide, 26 wheels overall.

Q. Twenty-six wheels? [130]

A. The entire train had 26 wheels.

Q. (By Mr. Collins): That is on three units?

A. Yes. Right.

Q. (By Trial Examiner Doyle): Was the same equipment, the same arrangement used whether it was driven on the public highway or on the grounds of the company? A. That's right.

Q. Was it your general proposition of routing that the trucks were loaded, of course, where the cane was cut, that then they took the closest or nearest route to the public highway, and then the public highway to the mill? Was that the custom?

A. That is correct.

Q. Making an allowance for another route for the trucks to come in, and I suppose a route for them to come out of where the cane was cut?

A. That is correct. [131]

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Cross Examination

Q. (By Mr. Karasick): Mr. Mair, if I understand the picture correctly, approximately half of

(Testimony of George Mair.)

the land cultivated in sugar cane from which the company derives cane for processing is cultivated by independent growers. Do you know whether approximately half of the total sugar production of the company is represented by cane furnished by independent growers?

A. If you are thinking of sugar, I would say "Approximately, yes."

Q. I see. And with respect to molasses, would it be approximately that too?

A. Correct. In the same ratio.

Q. Yes. So that approximately half of the total production [135] of the company in terms of sugar and of molasses is derived from the cane supplied by independent growers; is that right?

A. That's right.

Q. I hand you, Mr. Mair, Employer's Exhibit No. 5, which is the job description of the senior cane truck driver, and direct your attention to item 5 on that exhibit, which indicates that one of the duties of the cane truck driver is to "unloosen sling hooks on cane bundles as required, helps with Tomonaga hooks, and removes empty slings from boom chain hooks." Do you know whether or not it is generally the ground crew or a member of the ground crew who performs those tasks, rather than the senior cane truck driver?

A. It is generally the duty of the ground crew and nearly so in every case. This No. 5 was inserted here for a reason. At one time it was a mutual agreement between the truck driver and the member

(Testimony of George Mair.)

of the ground crew to assist each other. For instance, the driver may have parked his truck on a down grade and while loading, for that reason, was unable to leave the cab. Consequently, at the completion of the loading, he was assisted by the member of the ground crew to trim the side of his truck with a cane knife, and in turn for that, when the ground crew were in a jam hauling a long or short place, he in turn would assist the ground crew member to handle those hooks.

Q. I see.

A. But it was rarely done. [136]

Q. So that the picture is that occasionally a truck driver may do this, but generally speaking that is a task of the ground crew; is that right?

A. That is correct.

Q. I see. I believe you testified yesterday, Mr. Mair, that last year you attempted to do some of the loading of cane onto the trucks on public roads but the Territorial officials would not allow you to do so. And I take it the reason they objected was that this formed an obstruction in the road or a possible obstruction along the side of the road that they preferred not to have there; is that right?

A. I do not think I meant last year; I referred to one specific instance which happened early this year on the new Territorial highway.

Q. I see.

A. And we had our engineer call the Territorial Office and ask for permission to load about seven or

(Testimony of George Mair.)

eight loads on the shoulder of the new highway. Permission refused.

Q. Is this a fair statement? Generally you do not attempt to load on the shoulders of public highways or on the public highways because it would perhaps result in some traffic hazard and it would be some sort of obstruction to the road if you did so? Is that right?

A. That is a correct statement. We do not want to.

Q. Yes. And so wherever possible, consistent with efficient [137] operation, you try to load in areas which are off the public highway, even though you later use the public highway for transportation purposes after loading is completed; is that correct?

A. That is correct.

Q. How many trucks and by "trucks" I mean trucks in which cane is loaded and transported from field to mill, did the company operate in December 1953?

A. In December 1933 we owned——

Q. 1953. A. 1953. We owned 19 trucks.

Q. Nineteen trucks?

A. But the trucks we operated, which I believe was your question, ran around eleven per shift.

Q. Did you operate any trucks you didn't own?

A. Not last year.

Q. That you leased or otherwise?

A. Not last year.

Q. Not last year? A. No.

Q. So your total of all trucks operated for cane

(Testimony of George Mair.)

loading and unloading purposes was nineteen, right?

A. Correct.

Q. Now, you recall that yesterday you gave us certain information in response to the Trial Examiner's question concerning [138] the capacity or size of these trucks. I wonder if you could tell us what the load capacity of the nineteen trucks was in December 1953, and if it varied, if you had different load capacities for different trucks, tell us what they were.

A. In all cases the bodies of these trucks were built to handle 24 tons pay load gross cane. We did not haul 24 tons. It became slightly illegal to do so. We actually averaged around 22.

Q. Twenty-two tons. Is this because of the weight, in terms of the public roads?

A. That is right.

Q. There are certain weight limits that are prescribed by authorities for a public road?

A. They have a weight formula, the Territorial Highway.

Q. I see. And it was for that reason that you limited your loads to 22 tons, to conform to the requirements of the law regarding weight, is that it?

A. That is correct.

Q. Oh, yes. How many truck drivers were employed by the company, cane truck drivers, during December 1953?

A. I believe it was around 33 at that time. That is more or less; it may be 32 or 34.

Q. All of the truck drivers at that time were

(Testimony of George Mair.)

under the supervision of the truck dispatcher; right? A. That's correct. [139]

Q. And he supervised only truck drivers, did he not? He didn't give directions or orders to any other classification of employee, did he?

A. He did in a small way. We have a weighing and stripping gang, who determine the tare by taking daily samples from each field.

Q. Now, for the purpose of the record, the tare is t-a-r-e, isn't it? A. Correct.

Q. And am I correct in understanding that represents the hanging down cane, the waste material, rocks and some vegetation and other things; is that right?

A. Last year it was cane tops, trash, and other extraneous matter.

Q. I see. A. There were no rocks then.

Q. Now, you say a truck dispatcher would give directions in a small way to this crew that would weigh this cane, did you say?

A. I didn't mean in a small way. A small group of people did that work. Six people.

Q. And they worked at the mill?

A. They worked in the mill yard.

Q. I see. And this was done when the cane arrived and was ready to be sent into the plant? [140]

A. That is correct.

Q. How many people were in that crew?

A. Six.

Q. Six. What do the truck dispatchers do in the

(Testimony of George Mair.)

way of giving them directions or orders, supervising them?

A. After he got the radio-telephone call from the field loading foreman that a certain truck contained a bundle of cane which was designated as a tare sample, he notified the crew chief verbally, the crew chief is in charge of these six men, "This truck has a tare sample." They in turn went through the process of having the crane remove it from the truck, take it to a designated location, first weigh it, haul it back to the stripping location, remove all the extraneous matter, and haul the net cane back again to the scale, weigh it, and find the difference, from gross into net.

Q. Actually, the crew chief I think you refer to is the supervisor and head of the tare gang, is that it, or this gang that checks for tare weight?

A. We do not call him a supervisor within the industry meaning of the word.

Q. He heads up the crew?

A. That is correct.

Q. Is that a better way of putting it?

A. That's correct.

Q. Other than the truck dispatcher telling the crew chief [141] about this load that is to come in so that he knows which load he is to check, does the truck dispatcher exercise any other direction or control over the crew, either the crew chief or anyone else?

A. He becomes their immediate supervisor.

Q. In what sense?

(Testimony of George Mair.)

A. Well, all the administrative work in connection with that gang. He can take charge of the time and handling vacations and other personnel matters.

Q. You mean that the truck dispatcher is the initial recommending person for approval of vacation time or times off for the tare crew, is that it? Do they go to him for approval initially for time off or for vacation?

A. That is correct.

Q. Outside of this group at the mill, does the truck dispatcher supervise any other employees other than the truck drivers themselves?

A. No. Not in 1953.

Q. And he didn't exercise any supervision, direction or control over anyone working in the field, or the ground crew, did he?

A. No.

Q. I think yesterday you told us that a job for a truck driving, vacancies for truck driving jobs, were posted and filled wherever possible from plantation personnel. That is [142] correct, is it not?

A. Right.

Q. Is it fair to say, Mr. Mair, that that is true to the extent possible with all jobs of the company, where possible you try to fill them from existing personnel, rather than go outside and seek others to fill the job?

A. That is our company policy and I believe generally industry policy.

Q. Now, when truck drivers, cane truck drivers, are not driving trucks, they will work either about the mill or assisting in the garage, working about

(Testimony of George Mair.)

the trucks with those mechanics who work on them, is that not right?

A. That sometimes happens.

Q. I hand you Employer's Exhibit 2-A, Mr. Mair, and direct your attention to the upper portion of that map or chart which is designated as the Mountain View-Olaa area, and ask you what the distances are from one end of the Volcano Road as marked on that map to the other end of the cultivated area?

A. Take it from here to here and from here to the end, about another 2 miles. I would say the total mileage is about 14 miles, lengthwise.

Q. Fourteen miles. I see. Do you happen to know what its greatest width is? Or don't you have that figure offhand?

A. Not offhand, but it is in no case more than 3 miles. [143]

Q. So it is a maximum of 3 miles in width and a length of approximately 14 miles, for that area, is that right?

A. Correct.

Q. I think the record already shows, does it not, that the approximate distance between the Mountain View-Olaa area of cultivated cane and the Pahoa area is some 12 to 14 miles, between fields, is that right?

A. Correct.

Trial Examiner: Is there a scale on that map, Mr. Karasick?

Mr. Karasick: No, I don't see one, Mr. Examiner. I beg your pardon. There is, yes. It may be that one could figure it out. I think it might be a

(Testimony of George Mair.)

little helpful to have the record show it for the Examiner and the Board.

Trial Examiner: I just wanted to know whether there was one or not, because there should be one on the map, and with the scale you can figure out any distance you want.

Q. (By Mr. Karasick): The cane cutting crew is the group that in December 1953 actually harvested the cane, that is, cut it and prepared it for transportation to the mill, is that right?

A. Correct.

Q. When that crew was not working at cutting cane, they would work in the fields, clearing in the fields, preparing them for new planting, and that sort of thing, is that right? [144]

A. That didn't happen in 1953 to any appreciable extent; and it can only happen when the mill is not grinding, in what we call our annual off-season for overhaul.

Q. I see. Now, during the annual off-season for over-haul, is it customary for the cane cutting crew to clean the smaller fields and work in the fields generally? A. They do cultivation work.

Q. I see. But they work in the fields?

A. In the fields.

Q. Is it correct to say, Mr. Mair, and again, all of the questions unless I indicate to the contrary are directed towards December 1953. I think you understand that, don't you, Mr. Mair?

A. Yes.

Q. Is it correct to say that the senior cane truck

(Testimony of George Mair.)

driver all or substantially all the time, in hauling cane from the field to the mill, would use public roads to a greater or less extent?

A. Not quite correct. There are many times and many occasions where we don't use public roads at all. A certain number of our fields.

Q. With the exception of the Mountain View-Olaa area, there is no area that you would normally reach in the various growing areas shown on Employer's Exhibit 2-A except through the use of public roads in one measure or another. Right? [145]

A. In the Pahoa, Kamaili areas we use the public roads part of the time in all cases.

Q. Yes.

A. And Olaa, Mountain View, many times we don't need them at all.

Q. Yes. I suppose upon, even in that area, where the field lies? A. It all depends——

Q. It might be a matter as simple as crossing the Volcano Road in that area to get across from field to field; right? A. Right.

Q. In other cases it might mean if you were, as shown on this map, if you were at the left extremity of that area, the cane driver might be using the Volcano Road going right into the mill; right?

A. That is correct.

Q. About half of the cane produced, I think you have indicated, has come from the fields of independent growers. Is it a fair estimate to say that about four hours a day or about half of the working day of the senior cane truck driver would be haul-

(Testimony of George Mair.)

ing cane of independent growers as distinguished from cane of the company?

A. I wouldn't put it quite that way. I would say that about half of the year there would be many days when we would be hauling plantation cane exclusively and other days we might [146] be hauling planter cane exclusively.

Q. I see. So that you would put it on the basis of an over-all annual average that approximately half the time is spent in hauling planters' cane, is about what it amounts to? Is that right?

A. Correct.

Q. Would it also be a fair statement to say that about some 70 percent of the cane truck driver's time was spent in driving on public rather than on company roads in the hauling of cane during a season, and by season I mean a period of your 11-month year?

A. No, sir, I wouldn't quite put it that way. In some cases it might, but very rarely. Would you mind if I just gave you a specific example?

Q. No, no. Any way that you can best answer the question.

A. Not an average. You take the area which you just mentioned, which is marked on Exhibit 2-A as Mountain View.

Q. Yes.

A. And another one which is marked, second from the bottom, as Pahoa.

Q. Yes.

A. In these two areas, times and distances are

(Testimony of George Mair.)

comparable for harvesting and cane hauling purposes.

Q. May I interrupt you for a moment here, sir? You say times and distances are comparable? [147]

A. Times and distance, yes.

Q. Now, I don't understand that.

A. Well, using either yardstick.

Q. Go on with your answer and maybe it will make itself clear.

A. To Pahoa or Mountain View, running on public road only in order to get access to the field road, the elapsed time both ways would be, say, one hour and ten minutes. I would apply that either to Pahoa or Mountain View.

Q. This would be elapsed time from what point to what point?

A. From the mill to the end of the public highway, where we enter the field road.

Q. Would one hour and ten minutes — round trip, is that right?

A. That's right; going and coming.

Q. I see.

A. In field travel on the road would be, actually traveling, driving the truck, the truck moving, about forty minutes. Inside the field during loading operation, where the truck would be standing still while the crane was loading it or moving anywhere from fifty feet to 300 feet, as the piles of cane required, would use up about fifty minutes. Therefore, the fifty minutes, plus the forty travel, would give us an elapsed time of about an hour

(Testimony of George Mair.)

and thirty minutes, in the field, for the round trip, including the loading operation. [148] The travel time on the public highway in this instance would be one hour and ten minutes.

Q. In terms of comparative distances, directing your attention to the Pahoa area, what is the length of that area in miles, approximately? As shown on this chart.

A. You refer to the area in cane?

Q. Yes, that's right.

A. Around five or six miles, from top to bottom.

Q. Running from left to right or right to left on this chart, is that right?

A. Right. The scale makes it five miles.

Q. Five miles. Measuring it with a pencil.

Q. All right. So that the field itself is at its greatest point five miles long, right?

A. That's right.

Q. As compared with the twelve to fourteen mile area, or twelve to fourteen mile distance on the public road between that field and the mill, is that right? A. That's correct.

Q. I see. Now, again in light of what you have just told us, Mr. Mair, let me ask you if it is not a fair estimate to make that a cane truck driver during the period of time we are interested in would not on the average be spending approximately 72 percent of his time, say in the period of a month, average, in driving on public rather than company roads?

A. No, he wouldn't go that high. [149]

(Testimony of George Mair.)

Q. I see. What would you think would be a fair estimate, from your experience, Mr. Mair? Of the percentage of time spent on the average per month by the cane truck driver in December 1953 on driving on public, as distinguished from company roads?

A. It is rather hard to pick any particular month. I would like again to talk about the crop.

Q. Would you like to take the annual period?

A. I would rather talk about the crop.

Q. Surely. Use that as your—

A. (Interrupting): Take December 1953. We weren't on public roads at all. But annually I have always had 50-50 in mind.

Q. You think that a closer estimate would be 50 percent of the time spent on public—

A. (Interrupting): Oh, yes. It may not be strictly accurate but much closer than 70-30.

Q. It may be 60-40 but your best estimate is about 50-50, is that right? A. Correct.

Mr. Karasick: I think that is all.

Trial Examiner: Any further questions?

Redirect Examination

Q. (By Mr. Collins): Mr. Mair, in answer to a question asked by Mr. Karasick you indicated that when the cane truck drivers were not actually hauling cane that they might be [150] employed, if I understood you correctly, in the mill or in the garage; is that correct?

A. Yes. That is generally speaking correct.

Q. On the job description, Employer's Exhibit

(Testimony of George Mair.)

5-A, is there any specific reference to any mill work as being part of the cane truck driver's job?

A. It is generally covered by No. 10, where it says, "Does other work as directed by supervisor."

Q. But specifically there is reference to garage work, isn't there?

A. There is one specific reference. No. 9: "Assists motor mechanics in the capacity of helper while truck is being repaired."

Q. And isn't it true generally that when they are not driving trucks they are working in the garage?

A. Generally speaking, yes.

Q. And it would only be if there was no garage work available that they might be assigned some place else, is that correct?

A. It would happen, again, in an off-season, which I have referred to. Rarely during a grinding season.

Q. Now, you testified that your best estimate was that about 50 percent of the cane truck driver's time while driving, actually driving, would be on a public road, as opposed to private roads. Are you taking into consideration merely [151] the running time on both roads or are you taking into consideration the field time for loading in the field and for unloading at the mill when you make that estimate?

A. I used time, not miles.

Q. I don't know whether I make my question clear. Let us take it this way. The question was asked as to what your best estimate was as to the comparable time on the field roads and the public

(Testimony of George Mair.)

roads. Was it to that question, and with those facts only specifically in mind, that you gave your estimate of 50-50? A. That is correct.

Q. So that you were not in fact considering the amount of time that might be spent in the field by the truck driver in the loading operation itself and at the mill in the unloading operation?

A. I was considering the time spent in the field, but again I may not have given quite enough weight to the time spent at the mill. That was one in 1953 took considerable of the driver's time, due to slow unloading.

Q. Let me ask you this. Have you ever attempted to sit down and make a determination as to this respective time spent in both places, or is that something that you are merely endeavoring to put a figure to at this moment?

A. I am trying to do it right now. But the question has arisen from time to time and we have had an occasional spot check. [152]

Mr. Collins: I have no further questions.

Recross Examination

Q. (By Mr. Karasick): This question has arisen recently with respect to this case and there has been general discussion and consideration of the time element and distance element involved, is that not right?

A. That is correct. It is quite new to me right now.

Q. Yes. I understand that we are asking you

(Testimony of George Mair.)

to rather pinpoint a subject which is somewhat difficult for you to do.

If you were to eliminate the time the truck driver spent in the field on loading operation and the time he spent at the mill in unloading, would the figure of 50 percent spent on public roads be increased if we were to ask you how much of the time of the driver is spent on public roads and confined your yardstick in measuring that to the time spent only in travel? Do you understand the question?

A. I do. It probably could be increased slightly, naturally.

Q. Yes. You say that the driver spends a fairly substantial portion of his time in the field during loading. Right? A. Correct.

Q. And then he spends a fairly substantial portion of his time at the mill, unloading? Right?

A. Correct. [153]

Q. Subtracting that, using only the travel time alone, on company and on public roads, would it then be fair to say that you—that some 72 percent of the actual travel time of the truck driver during this period or during the annual period, if you prefer to use it, would be represented by travel on public rather than on company roads? Using only travel time as your yardstick.

A. It still sounds rather high. 72 percent. I wouldn't go that far.

Q. I see. A. But it would be increased.

* * * * *

(Testimony of George Mair.)

Q. (By Mr. Karasick): I want to again direct your question to only the time spent in travel.

A. Yes. You have already removed the loading and the unloading time?

Q. Right. Yes. [157]

A. Driving only; sitting behind the wheel and driving the truck?

Q. Right.

A. I will try not to guess; I will try to estimate. I will say, okay, then, around 60 percent.

Q. Around 60 percent on the public rather than on company roads. Is that right?

A. Actually driving the truck only.

Q. Yes. Now, would that figure of 60 percent be increased if you were to take, instead of driving time, mileages; would you say that over an annual period a truck driver drives so many miles and of the total miles he covered a certain percentage represents travel over public rather than company roads; would the figure remain the same or be different, in that case?

A. It would again be slightly increased, I believe.

Q. And approximately how much, from your knowledge and experience, would you say the figure should be?

A. That's a rather hard one.

Q. Do you want time to study that? I would be glad to have you defer the question. [158]

* * * * *

A. Your question was that if we use miles instead of [159] elapsed time, would the percentage

(Testimony of George Mair.)

of time on Government roads be increased? Is that correct?

Q. (By Mr. Karasick): Yes. I think you said it would. And then it was a question of whether you could give us a figure.

* * * * *

A. I will say that it could be slightly increased. I don't want to be specific on that one.

Q. Your best answer, and I don't want to prolong this, but your best answer would be "Something over 60 percent"—right?

A. Call it that, yes, sir.

* * * * *

ROBERT S. ANDERSON

was called as a witness by and on behalf of respondent employer, Olaa Sugar Company, and being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Collins): And what is your business or occupation?

A. Cost control engineer.

Q. For whom are you employed?

A. Olaa Sugar Company, Limited.

Q. How long have you held that position?

A. Seven months the 25th of August.

Q. And what was your occupation prior thereto?

A. I was a time study engineer with Libby, McNeil & Libby.

Q. Have you in the course of your time in the

(Testimony of Robert S. Anderson.)

employ of the Olaa Sugar Company computed certain figures from the books of the company concerning the number of traveling hours of trucks and other figures in connection therewith?

A. Yes, sir.

Mr. Collins: I ask this be marked for identification as the company's next exhibit in order.

(The document referred to was marked Employer's Exhibit 6 for identification.)

Q. (By Mr. Collins): I hand you Employer's Exhibit 6 for identification, and ask you if the figures represented there have been prepared on the basis of the work records of the company?

A. Yes, sir, they have. [161]

Mr. Collins: I offer this in evidence as Employer's Exhibit 6.

Mr. Karasick: No objection.

Trial Examiner: There being no objection, it is admitted and shall be designated Employer's Exhibit 6 in evidence.

(The document previously marked for identification Employer's Exhibit 6, was received in evidence.)

[See page 310.]

Q. (By Mr. Collins): Mr. Anderson, would you explain what the significance is of the first item "Total traveling hours of trucks"?

A. This 33,632 traveling hours is the record that is kept by shift by truck and filled out by the truck driver. He puts down the time that his truck is actually moving.

(Testimony of Robert S. Anderson.)

Q. And the next item "Total truck trips"?

A. 25,913 trips is also put on the form by the truck driver; at the completion of his shift he will put down how many trips he made to certain fields.

Q. Does that represent the figure for the year 1953? A. Yes, sir, it does.

Q. And the next item is a matter of mathematics, is that correct? A. Yes, sir, it is.

Q. In other words, you have divided the first item by the second item and then you secure the results of 78 minutes as the average traveling hours per truck trip, is that correct? [162]

A. Yes, sir.

Q. By truck trip, you refer to what; is that a complete circuit from mill to mill?

A. Yes, sir.

Q. This next item, "Average time from arrival of truck at field to completing of loading," of what does that item consist, Mr. Anderson?

A. That item consists of the time that the truck arrives at the field until the time it has completed loading and started back to the mill.

Q. And that is based upon what record?

A. That is based on a truck dispatch sheet.

Q. And how is the information on that sheet prepared?

A. In 1953 all of our fields that were loading cane, there was direct radio control with the loader loading the truck. And also there is a radio at the dispatch shack, and the dispatcher notes down the time on this sheet that the truck leaves the mill

(Testimony of Robert S. Anderson.)

yard; upon its arrival at the field, the checker and the loader uses the radio, he radios back what time the truck arrives at the field. He will also radio back what time the truck leaves the field.

Q. When it is completely loaded?

A. Yes, sir. The next item——

Q. The next item—78 minutes—is the same as the third item on the exhibit, is that correct? [163]

A. Yes, sir.

Q. The unloading time per trip of 18.11 minutes, what does that figure signify and how was it prepared?

A. That figure, again, is kept by the dispatcher. When the truck comes in to the scale, he puts down the time that the truck arrives; and then again he will put down the time that the truck leaves the mill and goes back to the field. And in that process of time the truck is unloading. So that elapsed time is the unloading time.

Q. Now, the next item of 2 hours 34.18 minutes is the average time of the complete trip; that is a matter of computation, is it not? A. Yes, sir.

Q. And what are the items that go into that computation?

A. The items on that are the time from arrival of the truck in the field to the completion of loading, the travel time per trip, and the unloading time per trip.

Q. And the balance of the exhibit are percentages taken from the figures previously shown, is that correct? A. Yes, sir.

(Testimony of Robert S. Anderson.)

Mr. Collins: No further questions.

Trial Examiner: Cross examination.

Cross Examination

Q. (By Mr. Karasick): Is my understanding of this exhibit correct, Mr. Anderson, that 50 per cent of the average time of the complete trip is the time spent in actual travel? [164]

A. Travel, yes.

Q. So that the average actual travel time of a truck driver during the year 1953 was slightly in excess of one and a quarter hours, according to this, is that right?

A. All over travel, both plantation and Government roads.

Q. Yes. But I am talking about travel time. Truck driver's average travel time, one way,—strike "one way." The average travel time of a truck driver during the year was one hour, slightly in excess of one hour and 15 minutes per trip. Right?

A. Per trip. Yes.

Mr. Karasick: Thank you. I have no further questions.

Q. (By Trial Examiner Doyle): According to this exhibit, at the bottom, the last item is "Percent of time in field loading and unloading, exclusive of transportation over farm roads." I take it from that it is meant for that length of time this truck driver is waiting around while someone else is loading and unloading the truck. Is that it?

(Testimony of Robert S. Anderson.)

Mr. Collins: As I understand it, the waiting may be for a number of reasons, in the field. But it is standby time, if I may use that term.

Trial Examiner: Standby time. It isn't that he is engaged in the loading or unloading or doing work in connection therewith. He is just sort of wasting time while others load and unload the truck?

Mr. Collins: Except to the limited extent that he may be [165] assisting the ground crew, that is correct.

Mr. Karasick: Is my understanding correct in this regard, to simplify the matter this way: That the truck driver besides driving the truck normally does nothing more after the truck is loaded than with a knife slashes off the ends of cane sticks sticking out so that they don't strike any objects or persons when the truck is being driven? Normally, that is true, isn't it?

Mr. Collins: I think normally that is correct. I think Mr. Mair has testified fully with respect to that. [166]

* * * * *

Recross Examination

Q. (By Mr. Karasick): Mr. Anderson, with respect to this last item on Employer's Exhibit No. 6, "Percent of time in field loading and unloading, exclusive of transportation over farm roads." That does not exclude the transportation over public roads, is that right?

(Testimony of Robert S. Anderson.)

A. No, that does — there is no travel time involved in that 49 percent at all.

Q. So really the description for that title could also be "Time spent by a truck driver in field from time of arrival to time of departure with load," is that right?

A. And also the time spent in the mill yard.

Q. From the time of arrival to the time of unloading? A. Yes.

Q. Is that right? A. Yes.

Q. That is what that title really or may be designated as, rather than the time you have, is that right?

A. This title here is perfectly correct also. [167]

Q. I am not quarreling with it; I am saying that the other is equally correct, is it not?

A. Yes.

* * * * *

Redirect Examination

Q. (By Mr. Collins): The amount of time that is computed in that figure does not involve the time when the truck actually goes off the Government road and hits the field until it leaves the field and hits the Government road?

A. That is right. That time is not included.

Q. Not all of that time is included, is that correct? A. Yes.

Q. That includes merely the time from the arrival at the loading point until departure at the loading point, am I right? A. That is right.

Mr. Karasick: Plus, I understand, Mr. Collins,

(Testimony of Robert S. Anderson.)

the time unloading—the time at the unloading point and the departure.

Mr. Collins: Yes.

Q. (By Mr. Karasick): Right?

A. Right. [168]

* * * * *

Mr. Collins: Mr. Examiner, during the recess agreement has been entered into between the parties for a stipulation to the following effect: That the senior cane truck driver had the labor grade 6, as appears in Exhibit B of the General Counsel's Exhibit 14, and as such his hourly rate of wages was \$1.28; that the cane cutters were employed on an incentive contract basis but they received a minimum guarantee comparable to the wages set out in labor grade 3, as appears in the same exhibit, under which labor grade the hourly rate of wage is specified to be \$1.105. This is the exhibit B to General Counsel's Exhibit 14, on page 49 thereof, at the bottom of which appears "As amended October 29, 1952."

Trial Examiner: So stipulated?

Mr. Karasick: So stipulated.

Mr. King: So stipulated.

Mr. Examiner, I call Severino Ramos.

SEVERINO RAMOS

a witness called by and on behalf of respondent union, ILWU Local 142, being first duly sworn, was examined and testified as follows:

* * * * *

(Testimony of Severino Ramos.)

Direct Examination [169]

* * * * *

Q. (By Mr. King): 8½ Mile camp. Do you know Favorito Banez? A. Yes.

Q. How long have you known him?

A. I have known him for over 4 years.

Q. Did you at any time live with Mr. Banez?

A. Yes.

Q. When was that? [170]

A. That was since 1942. Since 1950 he lived with me.

Q. About 1950? A. Yes, sir.

Q. What do you mean by living with him; live in the same house or what?

A. Live in the same house.

Q. You were house-mates, is that right?

A. That's right.

Q. And how long were you housemates?

A. For about 3 years.

Q. About 3 years? A. Yes.

Q. Now, directing your attention to about 1951, Mr. Ramos. Did you ever have occasion to have a conversation with Mr. Banez?

A. Yes, we have.

Q. Can you tell the Examiner what that conversation was about, what Mr. Banez said and what you said?

Mr. Karasick: Just a moment. I object [171]

* * * * *

Trial Examiner: I will sustain the objection.

* * * * *

(Testimony of Severino Ramos.)

This complaint alleges that there is this provision of the contract. I will accept proof as to how the discharge was [173] implemented by virtue of this provision. However, whether Banez had done what the union said he had done or not would be irrelevant to the issues framed by this complaint. So I am going to exclude any evidence as to the conduct of Banez prior to this conference of October 19th.

Now I will hear all your objections.

Mr. King: You have already ruled, Mr. Examiner. And for the record, may I make an offer of proof?

Trial Examiner: Yes.

Mr. King: We offer to prove through this witness, Mr. Ramos, that in 1951 he and Banez had a conversation in which Mr. Banez substantially said the following:

That he had campaigned with respect to the union shop question at Olaa Sugar Company at that time very hard to create dissension between the leaders, the rank and filers, and officers of the union, and that under a union shop the Filipinos would never have a chance;

We further offer to prove by this witness that Mr. Banez said the seniority provision of the union contract was good only for the Japanese and not for the Filipinos;

We offer to prove through this witness that on another occasion, somewhat before 1951, when Mr. Banez was involved in a matter for which he was disciplined by the company, something that hap-

(Testimony of Severino Ramos.)

pened on the job, Mr. Banez made like statements to this particular witness with respect to the Japanese and the union leadership being favored as against the Filipinos. [174]

That is all we have from this witness.

Mr. Karasick: To which offer of proof I hereby object.

Trial Examiner: And I will sustain the objection.

* * * * *

Mr. King: I would like to make an offer of proof at this time.

Trial Examiner: All right. I will permit you to make [175] your offer of proof. Just name the witness.

Mr. King: We offer to prove through Bonofacio Tapenio Matias that some time in August or September 1953 Mr. Matias was riding in an automobile to Kapoho with Mr. Banez, that Mr. Banez was not a union member at that time, wanted to go to Kapoho to speak to one Valorio, who was a union steward, to try to get Valorio to sponsor Banez to address a general union membership meeting of the union, at which he was going to speak on what he called "secrets of the union officers," having to do with what Banez termed were pro-Japanese and anti-Filipino actions of the union membership and the executive board of the unit; that this happened about one month before a so-called petition was circulated, allegedly by Banez and two other employ-

ees of the company, which called for such a general membership meeting.

That is the extent of that offer of proof.

Trial Examiner: Mr. Karasick, do you make the same objection?

* * * * *

Mr. Karasick: Thank you. To which offer of proof we object.

Trial Examiner: On the same grounds previously stated, I take it? [176]

Mr. Karasick: Yes, Mr. Examiner.

Trial Examiner: I will sustain the objection on the same basis as I sustained the previous objection to the same type of testimony.

Mr. King: I call Frank LaTore.

FRANCISCO LaTORE

a witness called by and on behalf of the respondent union, ILWU, Local 142, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. King): Where are you employed?

A. Olaa Sugar Company.

Q. And how long have you been employed by that company? A. About two years.

Q. Are you a member of the union in this case, the ILWU? A. Yes, sir.

Q. In 1953 you were also a member of the union?

A. Yes, sir.

(Testimony of Francisco LaTore.)

Q. Did you hold any position with the Olaa unit in 1953? A. Yes, sir.

Q. What was that position? [177]

A. Second vice-chairman.

Q. Now, Mr. LaTore, do you know Favorito Banez? A. I don't quite well know him.

Q. You are familiar with him; you know who he is, don't you? A. That's right.

* * * * *

Q. (By Mr. King): Did anything come to your attention, Mr. LaTore, in the latter part of 1953, as a unit official, with respect to Mr. Banez?

A. Yes, sir.

Q. What was that? [178]

* * * * *

A. That was the circulation of a petition. [179]

Q. (By Mr. King): Can you explain in a little more detail what you mean by that?

A. There were two fellows, namely, Dela and Revera, came to my home and presented me with a petition.

Q. About what time was that? What month?

A. This was about August 10, 1953. Prior to the meeting we had with the company with regard to this Banez case. At which time these two brothers were requesting my approval of the petition circulation among the rank-and-filers, and I told them that they should go through the proper channels, through the board, discuss with the board what the intent of the petition. And I further asked them what was

(Testimony of Francisco LaTore.)

the petition for and they refused to tell me the intent of the petition.

Q. Can you tell the Examiner what the substance of the petition was?

A. The only intent that they enlighten me in regards to the petition was to call a general membership meeting to clear up some misunderstanding between the rank-and-file and the officers, more particularly the Japanese.

Q. Just by way of background, was that a general membership meeting of the Olaa unit?

A. That was the request, Mr. Counsel, but I understand the situation of the Olaa Sugar Company, various localities are spread out such that when we do call for a general membership meeting it involves the stopping of the whole operation and [180] also with the whole employees in that company.

Q. About how many employees or union members were there in 1953, at that time, in the company?

A. At that time there were about 840 union members.

Q. So a general membership meeting would involve about 840 individuals? A. That's right.

Q. What then proceeded, Mr. LaTore, after you had spoken to these two men and they told you about this petition?

A. I invited them to come to attend one of the security board meetings to present their case. So they came to one of the security board meetings.

Q. Executive board meeting?

(Testimony of Francisco LaTore.)

A. That's right. The board members and the officers called the attention——

Q. You were there?

A. Yes, sir. Called the attentions and—— [181]

* * * * *

Q. Will you continue with that? Briefly, what happened?

A. I will make it short this time. The policy of the union whenever a grievance arise, we do as much as possible to discuss and settle grievances before the security board, stewards, and all officers. However, when was asked the intent of their petition, these two particular men just refused what they would want in that petition. After this board meeting——

Q. Are you saying by that that these two men refused to define what they had on their minds, is that it?

A. That's right. After this, the following day, the security board meeting, the stewards of the particular camp where one [182] of the petitioners live came up again to my home, stating that Banez and with these two guys are going around circulating petitions.

* * * * *

Q. (By Mr. King): Approximately when was that?

A. That was after about August 10, 1953.

Q. After August 10th?

A. Yes. After the conversation that we had in my own home.

(Testimony of Francisco LaTore.)

Q. It was after this executive board meeting, is that right? A. That's right.

Q. (By Trial Examiner Doyle): How long before October 19th was it?

A. It was between—about ending part of August 1953.

* * * * *

Q. (By Mr. King): Can you state again, Mr. LaTore, what was it that the stewards from this camp reported to you? [183]

A. The steward at the camp reported to me that Banez and Simon Dela and Revera were going all around together in various camps circulating a petition.

Trial Examiner: What was this petition for?

Q. Can you explain that to the Examiner, what that petition was?

A. I didn't really know because they just refused to tell us what they have in mind with regards to the petition.

Q. What was the purpose of the petition, the same you have already stated, asking for a general membership meeting?

A. I suppose it would be the same as asking for general membership meeting.

Q. All right, what happened then?

A. So on behalf of the board I was appointed the head investigator to check up in regards to this move of the three fellows involved in the petitions. I started to check up from camp to camp, holding meetings from camp to camp, and compiled all the

(Testimony of Francisco LaTore.)

reports regards to this petition circulation, and most particularly how Banez happened to be in the picture. It looks like that ever since Banez had made up his mind to quit from the union that he seems to be a mind out of place any way in the camp in any department that he was working with. [184]

* * * * *

Q. (By Mr. King): Mr. LaTore, you have testified, I believe, that about the end of August 1953, thereafter you conducted an investigation of this matter you discussed? A. That is right. [185]

* * * * *

Q. (By Mr. King): Mr. LaTore, you testified that you conducted [186] this investigation with respect to Mr. Banez's conduct from the end of August up until what time, approximately?

A. Somewhere around half of October, 1953.

Q. Until about the middle of October?

A. That's right.

Q. What then did you do with the results of this investigation?

A. I call a special security board meeting to report what I have got, what I have done.

Q. Was that about the middle of October, 1953?

A. That's right.

Q. And can you tell the Examiner approximately how many people were at this executive board meeting?

* * * * *

A. At this time we call a special board meeting,

(Testimony of Francisco LaTore.)

increasing the number approximately around 70 members attended that meeting.

* * * * *

Q. (By Mr. King): That included stewards?

A. That's right.

Q. And so forth, as well as all the unit officers?

A. That's right.

Q. And observers, did you say? [187]

A. Yes. [188]

* * * * *

Q. (By Mr. King): Just very briefly, Mr. LaTore, can you tell the Examiner what the unit decided to do at this meeting?

A. Upon my reporting to the——

Q. No. Just what did the unit decide to do?

A. After the meeting?

Q. After the hearing or meeting.

A. After the meeting of the board, the stewards, we decided to take up this matter to the company's attention.

Q. Was that matter taken up with the company?

A. Yes, sir. [189]

* * * * *

Q. (By Trial Examiner): Mr. LaTore, there has been some testimony here that there was a meeting of union representatives and company representatives on October 19th. Does that refresh your recollection? Was that the time when you met with the company pursuant to the action of the executive board? A. I think so.

(Testimony of Francisco LaTore.)

Q. (By Mr. King): Where was that meeting held, Mr. LaTore?

A. At the office conference room.

Q. At the Olaa Sugar Company office conference room? A. That's right.

Q. Tell the Examiner who was present on behalf of the union, just briefly.

Trial Examiner: How many members were there and the principal spokesman for each side.

A. In behalf of the union we always represent 20 members of the union. [190]

Q. (By Mr. King): You were there personally?

A. Yes, sir.

Q. Did you present the matter to the company?

A. Yes, sir.

Q. And who was there for the company?

A. Mr. West, Mr. Isherwood, Mr. Burns.

Q. What did you say to the company at that time?

A. We told the company because of the hazard of Brother Banez to the community, more especially to the cane cutters, that we want to enforce the section of our contract which we believe Banez have been violated.

Q. That's section 1 of the contract?

A. That's right.

Q. Will you give in a little more detail just exactly what you said to the company in this regard?

A. We told also the company that we have deal and we have help a lot Banez—we told to the offi-

(Testimony of Francisco LaTore.)

cial of the company that we have given enough deal, helping a lot on behalf of Banez ever since he was employed at Olaa Sugar Company since 1946. [191]

* * * * *

Q. (By Mr. King): As I understand it, Mr. LaTore, you stated to management the background of the union's relations with Mr. Banez, is that correct? A. That's right.

Q. You said that since he had been there since 1946 he had been in trouble, is that it, and the union had assisted him in the past? A. That's right.

Q. Years ago? A. Yes.

Q. Then what did you say to management?

A. Then we told the company to investigate the matter and wait for the reply.

Q. What was this matter that you asked the company to investigate?

A. The hazard of Banez among our rank and file, as well as the community.

Q. Did you explain to the company what that, as you say, hazard was? A. Yes, sir. [192]

Q. What was that?

A. Well, he always get fight from friend in camp, in the department that he belongs to.

Q. Was anything said by him with respect to this matter that you had investigated yourself?

A. Yes, sir. [193]

* * * * *

Q. (By Mr. King): In other words, what did

(Testimony of Francisco LaTore.)

you say to the company with respect to the matter you had investigated?

A. Well, we told the company the whole history background of Brother Banez within the community since he started in the employ of Olaa Sugar Company, up to the present time before his dis-chargement.

Q. We understand that; you have covered that. But what I am directing your attention to is that investigation you say you made from the latter part of August through September. Did you call that to the company's attention? A. Yes.

Q. And what was that?

A. We told the company that Banez was a member and a guy responsible for the petitions circulated.

Q. Was anything else said about Mr. Banez, what he had been doing that the union considered made him a hazard?

A. He has been seeing too many stewards that the Japanese alone are looking for the nationality and the Filipinos have been deprived of opportunities with regard to promotions, [194] applying for jobs and so forth. So with those lines the whole harvesting department, the harvesters at that time wanted to strike in protest with all this hazard that Brother Banez had been doing. [195]

* * * * *

Q. (By Mr. King): Mr. LaTore, do you understand that? Was that statement you just made,

(Testimony of Francisco LaTore.)

or words to that effect, mentioned by you at that time? A. Yes, sir.

* * * * *

Q. (By Mr. King): You said that that was a hazard. By that you mean a chance there might be trouble on the plantation with respect to cane cutters? A. That's right. [196]

* * * * *

Q. (By Mr. King): Can you tell the Examiner, Mr. LaTore, whether that business of the change over and a technological layoff was mentioned at the conference? A. Yes, sir. [197]

* * * * *

Q. (By Mr. King): Mr. LaTore, did the union state this matter of the hazard in connection with what you have just testified to was one of the bases anyway for taking up the matter of Mr. Banez with the union? A. Yes, sir.

* * * * *

Q. (By Trial Examiner Doyle): Mr. LaTore, did the union ask the company to discharge Mr. Banez? In that conference?

A. We did not ask for it. [198]

Q. What did you say relative to discharging or getting rid of Mr. Banez?

A. We told the company that we stand in our status quo, section 1 of the agreement, which we believe Banez has violated. [199]

* * * * *

Q. (By Mr. King): Mr. LaTore, you say you

(Testimony of Francisco LaTore.)

are employed by Olaa Sugar Company; is that right? A. Yes, sir.

Q. Actually, at the present time you are a business agent? A. Yes, sir.

Q. On leave of absence from the company under the contract? A. Yes, sir.

Q. And that was effective from the first of this year? A. That's right.

Q. But in 1953 you were an employee of the company? A. That's right.

Q. And a unit official? A. Yes, sir. [200]

Cross Examination * * * * *

Q. (By Mr. Karasick): And you knew that Mr. Banez was a member of the union from sometime shortly after 1946 to around 1952, is that right?

A. That's right.

Q. And then from sometime in 1952 up to the present time, Mr. Banez has not been a member of the union, is that correct? A. Yes.

Q. Now, as I understand your testimony, it came to your attention through Mr. Dela, is it, and Mr. Revera? A. Yes.

Q. That there was a petition being circulated and the [201] substance of this petition was that the members were dissatisfied with some of the employment conditions on the part of the Filipinos and they wanted to call a meeting and clarify some of these misunderstandings, is that right?

A. That's right.

Q. And you and other officers of the union felt

(Testimony of Francisco LaTore.)

there were regular channels to take and this was not the proper procedure, to go around petitioning for this meeting, is that right?

A. That's right.

Q. And as a result of that, you heard that Banez had also been interested in it, perhaps had circulated a petition, is that correct? A. Yes.

Q. And you made an investigation and you found out that that was a fact, right?

A. Yes.

Q. As a result of that you then decided, with other officials of the union, that this was a matter which violated section 1 of the contract, and you brought the matter to the company's attention through your grievance procedure, is that it?

A. That's right. [202]

* * * * *

Q. And did you understand this to be true, Mr. LaTore, that you called this matter to the attention of the company and said that this you thought was a violation of section 1 of the contract as to Banez's activity with respect to this petition? Right? A. That's right.

Q. Now, you wanted the company to do something about this, didn't you? A. Yes. [203]

Q. It was of sufficient importance to call the attention of the company to it. Right?

A. Right.

Q. Now then, am I right that you asked the company to do something with respect to Banez

(Testimony of Francisco LaTore.)

if you were right in bringing this complaint to their attention? A. That's right.

Q. What did you ask them to do about that? Did you ask them to promote Banez? A. No.

Q. Give him a better job? A. No.

Q. What did you ask them to do?

A. We just told the company to act upon this grievance; either transfer him or kick him out of the company. It is not our business.

Q. Isn't it a fact, Mr. LaTore, and isn't there really no argument about this, that the union went into the company and said, "Look! We think that is violating this section of the contract; if you violate this section of the contract, you are subject to discharge. We think he is violating it; we ask he be discharged." Isn't that the fact?

A. I think what the section said "disciplinary or discharge."

Q. All right. Now, weren't you asking for his discharge, Mr. LaTore? There's no argument about that, is there? [204] A. Up to the company.

Q. Of course. You couldn't fire him yourself, but you were asking the company to do this, weren't you? Isn't that right? A. Yes.

Q. I am not quite sure, Mr. LaTore, I understood what it was that you told the company at this meeting on October 19th. You were the principal spokesman for the union, weren't you?

A. That's right.

Q. Was Mr. Arakaki with you that day?

A. Yes.

(Testimony of Francisco LaTore.)

Q. Any other official of the union?

A. Yes.

Q. Who?

A. Our grievance committee. Brother "Bull" Shirasaki.

Q. Now, Mr. Shirasaki was a member of the grievance committee, right? A. That's right.

Q. Anyone else who represented the grievance committee or was on it? A. Ramos. [205]

* * * * *

Q. And other members of the grievance committee were present, is that right?

A. That is right.

Q. No other officers besides the grievance committee members, you, and Mr. Arakaki, is that right? A. That is right.

Q. You were the principal spokesman for the union, you did most of the talking from the union point of view, right? A. Right.

Q. Will you tell us now, as well as you can remember, what it is you told the company, or even better than that, tell us the whole conversation as you recall it, telling us who said what from the time you got in until the time you left. I know you don't remember the exact words, but tell us as well as you remember what was said and who said it?

A. I told the company "Since this separation of petition came along and Brother Banez was—broke into the picture, that from there on I was appointed to follow up the matter in—to agreeing to the vari-

(Testimony of Francisco LaTore.)

ous camps, taking investigation and compiling all the reports that I have we have found that [206] Banez had always try and always giving us lots of troubles within the community, more especially the rank-and-filers, outside of working hours, during working hours, he has been making all troubles, and we pointed out to the company that at this time we feel that Banez have violated section 1 of our agreement, therefore we ask the company to act upon this grievance."

Q. Do you remember anything else that you said or they said on that occasion, at any time during that meeting?

A. They told us that they will take the grievance into consideration and give us the reply afterward.

Q. Who was it from the company who told you that?

A. To the best of my recollection, I think that was Mr. Burns.

* * * * *

Q. You say that you told the company that your investigation had shown that Banez was causing trouble, is that right? A. That's right.

Q. No supervisor of the company had told you that, had he? A. No. [207]

Q. I think you said that he was causing trouble on the job, as well as off the job?

A. That's right.

Q. Is that right? What sort of trouble was he causing, Mr. LaTore?

A. Oh, he had several fights in the mill, where

(Testimony of Francisco LaTore.)

he was working one time in the mill, and then outside when he was transferred as cane truck driver, he talk with the co-workers in the troubles in the dispensary where he was employed for around three months.

Q. What sort of trouble did he make in the dispensary?

A. He had annoyed the girls co-workers in the dispensary, so they put him out of the dispensary position. [208]

* * * * *

Cross Examination

Q. (By Mr. Collins): Mr. LaTore, at this meeting did you ever in so many words ask the company to discharge Mr. Banez?

A. We tell the company that Banez has violated section 1 of our agreement and we think action should be taken by the company.

Q. I repeat my question: Did you ask the company to discharge him? A. No.

Q. Did you ask the company to discipline him, other than what you have stated about your position on the violation of the contract?

A. We did not ask the company to take action one way or the other, but just we said we want to enforce the status quo of section 1 of our agreement.

Q. In other words, you said to the company, "Here's the problem; [210] we are dropping it in your lap," is that it?

A. That is right, sir.

(Testimony of Francisco LaTore.)

Mr. Collins: Nothing further.

Cross Examination (resumed) [211]

* * * * *

Q. (By Mr. Karasick): All right. Now, what I am trying to find out, Mr. LaTore, is this, whether or not this is correct: When you and the committee went in to see the company about Banez, you had an idea or a purpose for going in, didn't you?

A. Yes.

Q. The purpose was to have the company do something about Banez, isn't that right? Isn't that right?

A. That's right.

Q. You couldn't do anything about Banez's employment, could you?

A. No.

Q. You couldn't either hire him or fire him or promote him or demote him, could you? [212]

A. No.

Q. You had to rely on the company to do that, didn't you?

A. That's right.

Q. And you felt if you pointed out this section of the contract, that that covered the matter, and if the company followed that contract they would do something with respect to the employment of Banez, isn't that right?

A. That's right.

Q. All right. Now, what they would have to do with respect to Banez was something about his employment, either discipline him or discharge him, according to the terms of that contract, is that right?

A. That's right.

* * * * *

(Testimony of Francisco LaTore.)

Q. (By Mr. Karasick): By the way, did you also have that in mind as your purpose when you went in? That's right, isn't it?

A. That's right. [213]

* * * * *

Redirect Examination

Q. (By Mr. King): Just to clarify this, Mr. LaTore, when you went in with your grievance committee to meet the company, as Mr. Karasick has pointed out, that was under section 1, paragraph 8, of the agreement, right? A. Yes.

Q. And you testified that your committee's intention was to do something about the situation under the section in question, right? A. Right.

Q. Isn't it a fact that you knew that it was optional with the company whether they would find the grievance that you presented to the company substantiated or not, it was optional with the company whether they took action? Isn't that correct?

A. That's correct. [214]

* * * * *

Mr. King: I offer to prove through Gabriel Amaral, who is a truck driver and was in 1953 at the company, that about the middle of 1953, on the job, Mr. Banez said to the witness, "The Japs get all the breaks on this plantation; the Filipinos no get nothing." And that Amaral replied to that, "That's because most of the Japanese know the job; that's the reason they get a better job when they apply for it." And that thereupon, Mr. Banez turned away and walked off.

And that's the extent of the offer of proof with respect to the witness Amaral.

Mr. Karasick: To which offer of proof objection is made.

Trial Examiner: Objection sustained. I take it the [219] same grounds as stated in the prior objection relative to similar matter.

Mr. Karasick: Correct.

Trial Examiner: And I make the same ruling. All right, Mr. King.

Mr. King: I have a further witness and would offer to prove through him—incidentally, his name is Guzman Lopez, also a truck driver for the company and was in the year 1953. Mr. Lopez would testify that in about the month of July, 1953, while on the job, Mr. Banez said to him, "Filipinos no more chance on this plantation; every time one job opening Filipinos never get; Japanese get first break." And the witness Lopez would further testify that substantially the same statements were made to him by Mr. Banez thereafter on five or six different occasions between the period July 1953 up to December 1953. And that's the extent of the offer of proof with respect to that one.

Trial Examiner: All right. I will make the same disposition of that, on the same objection. Sustained.

Mr. King: The final witness I would call and offer to prove through him certain matters would be Domingo Baguio, also a truck driver, employed by the company as such in 1953. He would testify that in early 1953 while on the job Mr. Banez said

to him, "When there is a job posting on the bulletin board, Filipinos apply for the job they don't get the job; [220] when Japanese apply they get the job." And the witness would further state that conversations substantially the same as this took place between him and Mr. Banez on two or three occasions from that time, in early 1953, up to and including the middle of 1953, to the best of his recollection.

And that is the extent of that particular offer of proof, and that is all I have, Mr. Examiner.

Trial Examiner: The same objection being made, I will make the same ruling with respect to such offer of proof.

* * * * *

MYRON O. ISHERWOOD

a witness called by and on behalf of the respondent employer, Olaa Sugar Company, Ltd., being first duly sworn, was examined and testified as follows:

Direct Examination [221]

* * * * *

Q. (By Mr. Collins): What is your occupation, Mr. Isherwood?

A. Director of industrial relations with the Olaa Sugar Company.

Q. How long have you occupied that position?

A. Since January 1, 1944.

* * * * *

Q. You have heard testimony concerning a meeting between the union and the company on October 19, 1953. Were you present at that meeting?

(Testimony of Myron O. Isherwood.)

A. Yes.

Q. Would you testify to the best of your recollection as to what was said by the union and by the company at that meeting, explaining who was present principally on behalf of the union and who on behalf of the company?

A. The meeting was held approximately 3 o'clock on the afternoon of October 19, 1953. Present for the company were the manager, Mr. Burns, administrative assistant at that time, Mr. West, and myself. There were about twenty people present for the union, among them being Kinji Omuri, Toshio Shirasaki, Frank LaTore is second vice-chairman of the unit, Fred Low, who is business agent for the union but not an employee of ours, Matsui Inaga.

Q. Did any of the other union members participate in the discussion? [222] A. Yes.

Q. Would you name those who may have participated in the discussion?

A. I am sorry I cannot recall the names of the ones who participated. There were four or five spoke up to make statements relative to the matter that the union was bringing before us. I couldn't say now who it was. I was trying to recall those others who were there.

Q. Yes. Would you continue with your testimony concerning what occurred at that meeting?

* * * * *

A. As I recall, Mr. Burns asked who would be the spokesman for the union and Frank LaTore

(Testimony of Myron O. Isherwood.)

indicated that he would. He [223] made statements to the effect that a petition had been circulated, a copy of which he did not have with him, which we asked him for at the time, but he gave us the general idea of what it contained, and called on two or three of the union members present to substantiate the fact that the petition had been taken to them for signature. "

* * * * *

Trial Examiner: To the best of your recollection, Mr. Isherwood, you will have to tell what was said and done there.

* * * * *

A. A statement was made that a petition was circulated; no statement was made as to what the petition contained, nor was there a copy of the petition there. As the meeting progressed various members of the union were called upon to make statements as to incidents that had occurred during the course of time that Favorito Banez had been an employee, with specific reference to the place and what had happened at those instances. [224] At the conclusion of those statements——

Q. Could you tell us who made those statements?

A. As I recall, one was either by Kinji Omuri or Bueno, one of our electricians, or some one, who was one of our electricians—we have a dozen of them—that while in the carpenter shop acting as a helper to one of our electricians who was changing or repairing an electric motor or a belt that was driven by an electric motor, Banez removed

(Testimony of Myron O. Isherwood.)

the "Do not touch" sign which is hung on our switches and activated the electrical circuit, which could have been very dangerous to the employee working on the motor. That was one instance. I had no knowledge of that incident prior to it being brought up at that time as no report had been made on it, although we were told that a meeting was held by the union during lunch hour to explain the situation to the other employees of the factory, and it was also reported to one of our supervisors.

Q. With respect to the statements that you have made, the reports that you have referred to, were they made at this particular meeting?

A. Reference was made to that report at that meeting, yes.

Q. Can I ask you to confine yourself as precisely as possible to what was said and done at this particular meeting. Now you were relating various incidents that occurred in connection with Mr. Banez. Continue.

A. Reference was also made to the fight which Banez had with [225] another employee named Cabreros in 1950 at the factory. A report was made that Banez had passed or made remarks relative to the officers of the union not backing up the Filipinos employees of the company on job selection at the service station of the company.

Mr. Karasick: May I ask, Mr. Examiner, if the witness will indicate whether these statements were made at this meeting, and further, if they were,

(Testimony of Myron O. Isherwood.)

that the persons who allegedly made the statements be identified.

A. The statements were made at the meeting. I do not recall what persons made the statements as they were employees, there were several employees who got up and talked. There were several employees who talked at the meeting. Some of them through the use of an interpreter, to further explain what the person was saying. We have somewhat of a language handicap among our employees with respect to the English language and occasionally one person will make a remark which will be interpreted by another person voluntarily.

Reference was made to the union agreement, as to the specific wording of the contract, to identify whether or not the instances that were brought forth by the union occurred on the job, as anything which occurred off the job would not have been covered by the agreement. That is, any activity that he might have engaged in during non-working hours, away from company premises. [226]

The question also came up as to whether Banez was a member of the union at that time, and the statement was made——

Q. (By Mr. Collins): When you say a question came up; do you mean someone from management——

A. Someone from management questioned the union as to whether or not Banez was a member of the union.

(Testimony of Myron O. Isherwood.)

Q. Do you recall who asked the question; did you ask it?

A. It would be one of three people. Mr. Burns, Mr. West or myself.

Q. Your memory doesn't respond now to the——

A. I don't recall now which one of the three asked it, except that the question was asked. And the answer was given by Mr. Arakaki that Banez was not a member of the union.

There then developed some discussion of our working relationships with the union, particularly in the light of the change over from mechanical harvesting, which was in the process of being done, with respect to employee termination. That our relations with the union had been satisfactory and that we hoped that they would continue that way as we had reached agreement in principle on the methods to be used during the employee terminations.

Mr. Burns stated at the end of the meeting that any action by any person which would tend to stir up racial antagonism or ill feeling was a very serious problem, and that the company could not countenance such activity by any employee [227] along that line.

The meeting adjourned probably around 4:30 or so, I would say.

Q. How long was the meeting in session?

A. About an hour and a half.

Q. How did this meeting happen to occur? Did someone call it; was it a regular scheduled meeting?

(Testimony of Myron O. Isherwood.)

A. It was not a scheduled meeting. I was informed that morning by Mr. West that the union had asked for a meeting that afternoon and that I was told to be present.

Q. Do you recall at that meeting whether the union or any spokesman for the union made any suggestion, request or demand, that the company discipline Banez in any way in connection with the matters brought up at the meeting?

A. The copy of the contract was brought out and section 1 was referred to, and request was made by the union for some action by the company.

Q. Was the action that the union was requesting specified? A. No.

Q. Is there anything further that was said at this meeting that you can recall, said or done?

A. Nothing.

Q. After this meeting did you have any discussions with Mr. West or with Mr. Burns concerning the matters that had been raised in the meeting?

A. Yes.

Q. Did you have many discussions or just a few?

A. Several discussions.

Q. Approximately when were those discussions had?

A. I would say not less than twice a week and more often than that, whenever anything came up with respect to the case itself.

Q. As a result of this meeting with the union and these subsequent discussions that you have just referred to, was any investigation made into the

(Testimony of Myron O. Isherwood.)

work record of Mr. Banez? A. There was.

Q. Who made such an investigation?

A. I did.

Q. And what was the result of your investigation?

A. I made a recap of the entire time that Favorito Banez had been an employee, starting from the day of hire, February 4, 1946, his work on the various jobs to which he had been assigned since his hire, as a cane cutter, a car tender, centrifugal operator, hospital attendant, and then a cane cutter, then a temporary transfer as fingerlift operator, then as a full-time fingerlift operator, then as a scaleman, then back to a cane cutter, and then as an electrician trainee. There may have been some slight deviation, one little job may have come in ahead of the other. Then as transportation handyman and finally as a senior cane truck driver. [229]

Q. In investigating his work record did you look into the matter of disciplinary action that may have been taken in connection with his work?

A. Yes. [230]

* * * * *

Trial Examiner: I am going to grant your motion and permit the amendment, Mr. Collins. [236]

* * * * *

Mr. Collins: In accordance with the Examiner's ruling, the company moves to amend its answer by modifying the section marked with the Roman numeral XI to insert at the conclusion of that page

(Testimony of Myron O. Isherwood.)

and in lieu of the balance of the answer found [237] on page 3 the following:

And that based upon such conduct, considered in the light of the work record of the complainant and the effect of such conduct upon the operations of respondent, the complainant was discharged by the employer.

We have attempted to limit the extension here to the work record and to the effect of the general charge of the disruption of harmonious relations upon the company, all of which I think is included within the original answer, but specifically merely extending it to permit the admission of the work record. [238]

* * * * *

Trial Examiner: I am going to permit the respondent to amend the answer as the respondent wishes, in which ever way he thinks will serve the respondent's purpose, in order that he may present a full case as he sees it. [240]

* * * * *

Mr. Karasick: May I examine the witness on voir dire?

Trial Examiner: Yes.

By Mr. Karasick:

Q. Mr. Isherwood, I hand you certain photostat documents which are marked "Employer's Exhibit 7-A to 7-G, inclusive, for identification, and ask you if those are documents which you have taken from the personnel file of Mr. Banez, the complainant in this case? A. They are.

(Testimony of Myron O. Isherwood.)

Q. When with reference to October 19, 1953, did you first look at any of these documents?

A. Many of them I looked at before October 19th. The date on them; they came in before the 19th of October.

Q. No. But with reference to October 19, 1953, when was the first date thereafter that you looked at those documents, and you personally, I mean?

A. Probably some time between then and the first of December. I couldn't be specific as to the date, no. [253]

Q. Do I take it that it is your testimony you did look at these documents prior to the discharge of Banez?

A. Yes. [254]

* * * * *

CALEB E. S. BURNS

a witness called by and on behalf of respondent employer, having been previously duly sworn, resumed the stand, was examined and further testified as follows:

Direct Examination

Q. (By Mr. Collins): You are the same Mr. Burns that has previously testified?

A. I am.

Q. And you are the manager of the plantation, is that correct?

A. Yes.

Q. Do you recall the meeting of October 19, 1953, with the union?

A. I do.

Q. You have heard Mr. Isherwood's testimony with respect to it. Do you have anything that you wish to add to that? [257]

* * * * *

(Testimony of Caleb E. S. Burns.)

A. No. I think in general Mr. Isherwood's statement covered the general area of the meeting. The one factor however I do not recall whether Mr. Isherwood discussed in any detail or not was the problem of the serious racial angle that was mentioned by LaTore, I think, at that meeting. That would be the only addition that I would make to Mr. Isherwood's statement.

Q. And what was the substance of the statement made by Mr. LaTore at that time, as you recall?

A. He stressed the fact that due to the layoffs which were planned that there had been a certain amount of racial antagonism and that in general Mr. Banez had been one of the parties responsible for the creation of this situation.

Q. Do you recall whether the union made any request or demand upon you at this meeting that Mr. Banez be disciplined or discharged? [258]

* * * * *

A. October 19th was the date, due to my checking records. I know that. The meeting was in the afternoon. Approximately twenty union members were present. The names have been [259] given to you in more detail than I am able to give them. The spokesman was LaTore. Frankly, LaTore is difficult to understand, due to his lack of knowledge of the English language. Those of us who deal with people who do not speak English too well get an idea; sometimes we don't know what all these words mean. LaTore's presentation was primarily

(Testimony of Caleb E. S. Burns.)

based on the fact that there had been a petition circulated. We asked what was in the petition. We did not get a very clear answer to what was in the petition.

Then there were a number of the men there stood up and gave examples of difficulties that Banez had in working with his fellow workers. Some of those examples were given here today. I think there were a few more. I don't recall them but they were frictions between Banez and some of his workers.

But to my own feeling of the thing, the primary problem there was based on this racial problem, which was created primarily by the layoffs which we were faced with. The reason why I say that is racial, there were approximately 75 percent of our work force in the field Filipinos, and due to the fact that the layoffs were in the field primarily, there were more Filipinos affected than anyone else, and consequently there was some heat generated there. We were aware of that. This was not new information to us at that meeting, but it was a reiteration on their part of the situation which we were aware of. Perhaps that is why that made more of an impression on me. [260] I don't know. But nonetheless, that was the significance of this meeting as far as we were concerned. We told the union, and I answered them, that we would check their various charges, but frankly we were very much against any racial antagonism. It was not the policy of the company to engage in anything like that whatsoever, in terms of layoffs, promo-

(Testimony of Caleb E. S. Burns.)

tions, or any other employee relationships. And we said again that we would study the matter and we would let them know. There was no effort on their part to indicate what they thought we should do with Banez. They said this, after their presentation of these facts that I have mentioned, or incidents, they said that they were bringing up the fact that Banez had violated section 1, paragraph 8, of the contract, and wanted us to take some action on it. But their primary pitch was violation of the contract. There was no indication of trying to tell us what to do about it.

Q. Of course you understood the contract called for disciplinary action or discharge?

A. That is correct. After continuous repetitious activities of this nature.

Q. Was Banez the only one mentioned by the union as being the creator of this racial unrest?

A. No. They mentioned two other individuals, but they said that they would talk to those individuals and they felt that would be taken care of. Now, the information we had received [261] prior to this, we did not have the information that there were two other people mixed up in it. It was primarily Banez that was the person concerned with this activity.

Q. Did you know, too, that Banez was not a union member; you knew that?

A. I did not know that until October 19th.

Q. Did that come up in the course of the meeting, that he wasn't a union member?

(Testimony of Caleb E. S. Burns.)

A. Yes, it did, because it was pointed out under that paragraph that he was not a union member.

Q. Did you know whether the other two men mentioned were union members or not?

A. We were told at that meeting that they were union members.

Trial Examiner: All right, Mr. Collins, will you continue?

Q. (By Mr. Collins): You mentioned the general mechanization and layoff program. Will you explain to the Trial Examiner what that is all about?

A. We employed as of December 1953 approximately 1100 bargaining unit people. We have a mechanization program which calls for the ultimate elimination of some 540 people, which is a very substantial layoff in terms of the size of our operation and also without question the largest lay-off the sugar industry has ever experienced in recent years. So it is something of very unusual importance. The layoffs and the [262] problems associated with the layoffs were discussed with our union, agreement was reached on severance pay and the method that would be employed in laying off these people. The first group to be laid off was 219 employees as of December 17th, the final upshot of the thing. Actually, discussion started in early summer, and we had a deadline for the layoff sometime prior to December 15th but due to the fact our mechanical equipment did not arrive on time, it was delayed until that time.

(Testimony of Caleb E. S. Burns.)

That was one section of the layoffs. Now, we had a great deal more to go. And we were in the throes of going through this layoff program when this problem that we speak of, this racial problem, became rather serious.

The mechanization program has one more layoff to go. We have had two, one December 15th and one July 17th and we will have another when our equipment arrives sometime next year. Now we make a great deal of this whole mechanization program because if we are not able to fully mechanize that plantation it will cease to operate in years to come because of our very low productivity per employee. Not because our people don't work but because we do not have or did not have the equipment to help them produce. And this whole program has to go through in order to make it an economic operation. And actually, as I have said, it will be the saving of our company.

Q. After this meeting with the union, did you have any discussion [263] with any of the members of the management of your company concerning Banez? A. Yes.

Q. Did you have many meetings or few?

A. We had many discussions about this problem. I will say this: we have a meeting every morning at 8 o'clock of our top group, the assistant manager, the field superintendent, and the factory superintendent. It is an operational meeting that usually lasts anywhere from 15 minutes to a half hour.

(Testimony of Caleb E. S. Burns.)

This Banez situation was not only discussed at the morning meetings after October 19th but was something that we had been discussing some time prior to that too.

Q. At any of these meetings was Banez's work record considered, Mr. Burns?

A. It was. As a matter of fact, a request was made for Banez's work record.

Q. Who made that request?

A. I made that request, and I think Mr. West asked Mr. Isherwood to dig it out.

Q. Did you review his record? A. Yes.

Q. Mr. Banez was discharged? A. Yes.

Q. Are you the man that discharged him?

A. Yes. [264]

Q. What was your decision based upon?

A. My decision to discharge Banez was based upon the racial problem that we were certain he had helped to create. We also were looking forward to the other layoffs that we had and the difficulties we felt we would run into in the future if action was not taken. We looked at his work record, which was very poor, and in addition, we were in the position where we did not have to adhere to a policy which we had requiring the hiring of a cane cutter before we would allow any of our department heads to get rid of any other employee.

* * * * *

Q. (By Mr. Collins): Mr. Burns, I show you General Counsel's Exhibit 15, which is a letter dated

(Testimony of Caleb E. S. Burns.)

December 1953, to Mr. Banez, and ask you if that is your signature attached? A. It is.

Q. Did you prepare that letter?

A. No, I didn't.

Q. But you signed the letter? A. I did.

* * * * *

Q. (By Trial Examiner Doyle): Just one question. Of all the reasons that you gave for Mr. Banez's discharge, you did not say that one factor was that the union had pointed out to you that his conduct was in their estimation consideration of section 1 of the contract; did the fact that the union had pointed that out, did that play any part in your decision to fire Banez?

A. It did to a certain extent; it was a factor to be considered.

Q. Yes. You didn't mention it before and I wondered, since we have spent so much time on that subject, whether you felt that was entirely unrelated to Banez's discharge? A. No. [266]

Trial Examiner: All right, Mr. Karasick.

Cross Examination

Q. (By Mr. Karasick): Isn't this correct, Mr. Burns, that as Mr. Collins has previously stated, the primary reason for the discharge of Banez, together with the other reason assigned by the company, has been the feeling of the company of the alleged violation of section 1 of the contract, as stated in your letter?

(Testimony of Caleb E. S. Burns.)

A. It is certainly one of the factors, without question.

Q. As I get the picture, it is something like this: For some time before October 1953 the company was contemplating a mechanization program, is that correct? A. That is correct.

Q. As a result of that program there would be involved the layoff of a considerable number of employees? A. That's correct.

Q. Because these employees, at least in the field, as you have indicated, were primarily of one racial group, your experience had indicated that there might be some feelings of discrimination and racial antagonism because of these mass layoffs or aggravated by these mass layoffs? Right?

A. I wouldn't say my experience because I hadn't gone through any such layoffs before.

Q. Did anything indicate to you that that would be the case?

A. We picked up the information that would certainly indicate [267] that that was a growing problem with us at that time.

Q. Laying off large masses of employees like that meant that you needed the cooperation of the union, did it not? A. That is correct.

Q. And this was a trouble period both for you and the union, and you wanted no union problems any more than you could possibly avoid them, particularly at that period, is that right?

A. We didn't expect any union problems.

(Testimony of Caleb E. S. Burns.)

Q. You did need the union's cooperation, though? A. Yes.

Q. Did I understand you to say, Mr. Burns, that you had discussed the problem of Banez with other company officials prior to October 19, 1953?

A. That is correct.

Q. In what respect did you discuss Banez with other company officials at prior dates?

A. We had, as I said before, indications that this racial problem was becoming serious, and at our meetings in the mornings very often we would discuss problems associated with the layoffs and also the problem of this growing resentment that we had fairly good information on.

Q. You didn't talk about Banez as such but about the problem of racial dissension?

A. No, we talked about both, Banez and the problem.

Q. Oh. [268]

A. His name had appeared.

Q. When is the first time that anybody brought you Banez's name with respect to racial dissension?

A. I wouldn't know exactly but I would say in July, approximately; the summer period.

Q. And who brought that information to you?

A. I don't know who did at first. It came in associated with the layoff problems.

Q. What was the first information you received in that connection? A. You mean——

Q. Specific information you received with re-

(Testimony of Caleb E. S. Burns.)

spect to Banez in July 1953, from the unnamed person?

A. The information that I received was that there was a growing problem as far as this racial situation was concerned, and that it was believed at that time that Banez was one of the people mixed up in it.

Q. Banez was mixed up in what specifically. You talked about a general racial problem.

A. Yes.

Q. What was it specifically that Banez was thought to be mixed up in?

A. Well, advising the Filipino group that they would not be treated fairly under the terms of the layoff agreement.

Q. Had you announced the layoff agreement at that time? [269]

A. We had not announced a layoff agreement in July specifically but everyone at Olaa was aware that layoffs were coming, and I think by July most people were fairly aware about how many.

Q. You still can't remember who first mentioned Banez's name? A. No, I can't.

Q. So, according to your testimony, from July you knew that Banez had this feeling?

A. I would say this, that from July, information or rumor or whatever it was, we started to get indications that this problem was growing and also that Banez was linked to it.

Q. Anyone else's name mentioned in that connection?

(Testimony of Caleb E. S. Burns.)

A. There was at the early stages one of our supervisor's name linked with it. And in checking the matter through we found that a supervisor had gone on some radio program and had actually stimulated this problem somewhat, but his pitch was primarily this, that the Filipino, especially the younger ones, should make every effort to go to school and learn a trade, and so forth, because of the problems associated with the elimination of hand labor.

Q. Who was the supervisor?

A. A man by the name of Mr. Patao.

Q. Spell it, please. A. P-a-t-a-o. [270]

Q. His first name, if you have it?

A. Antonio.

Q. Thank you. Did you call Mr. Patao in?

A. No, I did not. But I had someone in our organization talk to him.

Q. You did not talk to Mr. Banez?

A. I did not.

Q. No one from the company did, as a matter of fact? A. No.

Q. At any time prior to his discharge on December 17, 1953? A. No, I don't think——

Q. Pardon me?

A. I don't think anyone from the company did.

Q. So the matter of these allegations directed against Banez, he was *never* an opportunity personally to answer or to refute or substantiate, is that correct? A. Before discharge?

Q. That is right. A. That is correct.

(Testimony of Caleb E. S. Burns.)

Q. Dela's and Revera's names were mentioned to you on October 19th? A. That is correct.

Q. Had they been mentioned to you before that, Mr. Burns?

A. They may have; I am not sure.

Q. Did you speak to Dela or Revera about the matter, or did [271] anyone from the company?

A. Not that I am aware of.

Q. Dela and Revera are still employed by the company, are they not?

A. I believe they are.

Q. You indicated they were union members?

A. Yes.

Q. And pursuant to that section of the contract, it was not something which could be handled in the same way as with a non-union man, is that right?

A. I presume that's correct.

Q. The petition that you heard about,—I hand you, Mr. Burns, at this time General Counsel's Exhibit 18 for identification, which the reporter has just marked for me, and ask you if it is not so that that is the petition which was referred to by the union committee or LaTore or any of the union officers during the meeting of October 19th?

A. I don't know. I don't know. I have never seen the petition before.

Q. So that you never saw this petition before, is that right? A. No. That is right. * * * * *

Q. (By Mr. Karasick): Did you know, Mr. Burns, that the petition which the union people were telling you about on October 19th was a peti-

(Testimony of Caleb E. S. Burns.)

tion by members of the union who wanted to hold a special meeting on a Saturday in September 1953?

A. I did not know what the content of the petition was; we never saw a copy of it.

Q. They never did show you one? [273]

A. No. I never saw a copy of it.

Q. They told you something about a petition, as I understand it? A. That is correct.

Q. And as I understand it, you asked them, "What about this petition; what is it or was it?" Is that right? A. That is right.

Q. Who was it you asked, do you remember; was it LaTore?

A. I presume it was LaTore. You have to picture this, twenty people sitting around a table and very often more than one talking at once.

Q. Yes. I appreciate that. Do you recall, and I am not asking you now if you recall who said it, but do you recall if any one person at that time told you something about the petition at all?

A. I think that about the essence of it was that a petition was being circulated and when we asked could we see a copy of the petition, nobody had a copy. It had something to do, we understood, with a meeting, but that was about the limit of our knowledge.

Q. As I take it, the union's representatives were saying to you in effect that they were objecting or protesting this business of the petition, that Banez, they thought, had something to do with it, is that right?

(Testimony of Caleb E. S. Burns.)

A. Yes. I think that is a part of it. [274]

Q. Am I correct that the company did not ask the union to get a copy of this petition for them so the company could see what it was the union was protesting about? Is that right?

A. No. I think we did ask to get a copy of it, and we were not able to do so.

Q. But never at any time prior to Banez's discharge did they ever give you a copy of the petition so you could for yourself see what the petition was about? A. No.

Q. Did I understand you correctly, Mr. Burns, to say that you were certain that Banez had helped to create racial antagonism prior to his discharge?

A. Yes, I said, I think, that we certainly felt very strongly that he was instrumental in that.

Q. These are things you heard from other persons? A. That is correct.

Q. (By Trial Examiner Doyle): Is this prior to October 19, prior to this meeting?

A. That is correct. We did hear that this thing was going on.

Q. I am not talking about "this thing," Mr. Burns, about there being some feeling over these layoffs or the general situation there. Did you prior to October 19th hear specifically that Banez was fostering racial difficulties among your work force?

A. Yes. [275]

Q. (By Mr. Karasick): When and from whom, Mr. Burns?

(Testimony of Caleb E. S. Burns.)

A. I say I have no recollection of the time that that first appeared on our discussion sheet at all.

Q. Anything in Mr. Banez's employment record which would note the time and the informant who gave you this information? A. No.

Q. Anything which would indicate anywhere the details as to what Mr. Banez was supposed to have been doing?

A. No, I don't think there is.

Q. I take it there is nothing more specific that you can give us in that connection other than you have already testified, is that correct?

A. That is correct.

Q. (By Trial Examiner Doyle): Did you take any steps yourself, Mr. Burns, to institute an investigation after you heard this about Banez to find out if it was in fact true that he was fostering this situation? A. When?

Q. Prior to October 19th.

A. Yes, we did. At our morning meetings that I outlined to you, we kept sounding out with these department heads, as it were, what did the thing look like. In other words, it was most critical to us and we wanted to make sure that we were keeping abreast of it.

Q. I am again separating Banez from the general situation. [276] After you first learned that Banez had something to do with or was fostering this situation, what did you do to check up as to Banez's activities in that regard? Do you follow me?

(Testimony of Caleb E. S. Burns.)

A. Yes. We asked our department head people there to keep an ear out for any association between Banez and this other thing.

Q. All right. But I take it you heard nothing that disturbed you thereafter until October 19th, is that right?

A. No. We were disturbed and actually about September, I think, August or September, we set a deadline of October 15th when the layoffs would be effective. There was a pick up in this pressure, this racial problem. Then about October first we found that our mechanization could not be put into effect on the 15th of October but would be somewhat later, I don't know whether we went to November 15th or some other date. When we did that there was a slight easing of this problem. At least, it didn't get any worse.

Q. What I am getting at, again: while your problem might come and go with mechanization, what were you doing to determine what Banez was doing?

A. I was working through our department heads, who have their ear to the ground and working on it.

Q. What I am getting at: You didn't take any action in the matter until December 17th, when you did discharge him, and that is a long time after October 19th. So I take it that [277] though you say your department heads had their ears to the ground, you found nothing wrong with Banez until sometime at least after October 19th, is that right? You took

(Testimony of Caleb E. S. Burns.)

no corrective steps with regard to Banez until after the union came into the picture, did you?

A. That is correct.

Q. And if you thought that Banez had been doing something to seriously disrupt your organization you would have taken such steps?

A. Our thinking at that time was that we were in a position where we had to weigh very carefully what we did, and it was our best judgment at that time not to take any steps of that nature.

Q. Mr. Burns, the thing that appears to me and that is causing me to ask you these questions is this, and I understand you had an aggravating situation there due to the mechanization, even without animating the employee situation it was of such a nature it could have created differences between races in and of itself, isn't that correct?

A. That is correct.

Q. And there were times when, without all this confusion by Banez or anybody else, conditions would become acute when the layoffs would come and become less acute when layoffs were diminished. I understand that. What I am trying to get at is: In that interim when things were going along in general, [278] were you or your officers or assistants doing anything which would bring information to you that this excitement over this was being fostered or caused by Banez; were you doing anything to investigate that?

A. We were doing this. We were getting our information in. We didn't put on a full dress investi-

(Testimony of Caleb E. S. Burns.)

gation, but we were certainly keeping up with what was going on.

Trial Examiner: All right.

Q. (By Mr. Karasick): As I understand it, Mr. Burns, you first heard of Banez in this connection in July, 1953? A. Yes.

Q. And this, as you have explained, was a critical matter to you and to the company?

A. That is correct.

Q. You did not, either yourself or through other officials or supervisors of the company, warn Banez about this matter at any time from the time you first heard about it in July until he was discharged in December, 1953? A. That is correct.

Q. Is that right?

A. That is correct. I was studying it.

Q. I realize dates are hard to remember, but can you remember the date or the approximate date that you made a request for Banez's work record?

A. No, I can't. I know it was sometime probably after this [279] meeting.

Q. That was what I was going to ask you. Using the meeting as a starting or guide post, it was sometime after the October 19th meeting? A. Yes.

Q. Do you recall about how long, without setting the date? A. No, I don't.

Q. Was it a week or ten days?

A. I presume it would be within a week or ten days.

Q. Within a week or ten days. A. Yes.

(Testimony of Caleb E. S. Burns.)

Q. And it might have been within a day or two after, is that right?

A. It could have been. [280]

* * * * *

Cross Examination—(Resumed)

Q. (By Mr. Karasick): Mr. Burns, when did you make the decision to discharge Banez?

A. I presume about the 1st of November.

Q. Now you say you presume that.

A. Yes; I am not certain of the exact date.

Q. The decision was one that you made yourself, right?

A. I made the decision but it was made on the basis of consultation with our top staff.

Q. Consultation with top staff means who?

A. Mr. West and Mr. Conant and Mr. Lieth, I believe, at that time.

Q. Mr. West, and who else?

A. Mr. Conant.

Q. Mr. Conant is——

A. Field superintendent. [288]

Q. First name? A. Raymond.

Q. And you mentioned another one.

A. Lieth. L-i-e-t-h. William Lieth.

Q. And his position?

A. Factory superintendent.

Q. Whom else did you consult, if anyone?

A. I think that during the course of discussions on this case from the October 19th meeting, let us say, forward, involved all of our department heads. You have the list here somewhere, I think; on our

(Testimony of Caleb E. S. Burns.)

table of organization. I will outline to you how that is done.

Every Friday morning we have a meeting of department heads, where our top group and our department heads meet. This subject was discussed on occasions before the October 19th meeting and afterwards.

Q. Pardon me. "This subject." What subject?

A. The subject of Banez and the subject of the racial problem.

Q. You say it was discussed before October 19th, is that right? A. That is correct.

Q. And I think you indicated how long before yesterday. What was the date of that?

A. I think sometime in July the problem—I will differentiate [289] the problem now. Banez and the racial problem. The racial problem came first, I think, actually. That is, we became aware of that and very shortly thereafter Banez's name became associated with it.

Q. What was this racial problem? That's a pretty general term. What do you mean by racial problem?

A. As it applies in this case, it was the problem which grew out of the layoffs which were going to be made toward the end of the year. The reason why we call it a racial problem and the reason it probably was one was the fact that there were many more Filipinos involved in the layoffs than any other nationality, due to the fact that the preponderance of people engaged in that operation was

(Testimony of Caleb E. S. Burns.)

Filipino. I think 75 percent of the field work force was Filipino. They were all still made up largely of the new hires. So you had a racial group which was more seriously hurt in this layoff than a normal plantation action of any kind.

Q. As I understand it, by far the vast majority of field men were Filipino origin?

A. About 75 percent.

Q. So if you had to make a great cut in the field staff, it would be natural that they would be the ones most greatly affected because they were there in greater numbers, is that correct?

A. That is correct. [290]

Q. Is that what you mean by the racial problem?

A. This is correct.

Q. Anything else you mean by the racial problem?

A. Because this group was the group that was more seriously concerned, they in turn indicated at one time, I mean—I say “indicated”; we learned through the grape vine and through reports from our department heads and overseers that there was a very good chance that this group would not go along with the layoff program. I say “this group”; I am speaking of the entire Filipino group of employees now, as separated from the Filipino group that was going to be laid off. In other words, we had a situation which we felt was developing that could end up with our whole layoff program being completely thrown out the window.

Q. You say “this group wouldn’t go along.”

(Testimony of Caleb E. S. Burns.)

What would they do; how could they not go along?

A. By creating a strike or a stopwork or any other work action.

Q. You mean if in protest these people through the union called a strike, it would cause you embarrassment and cause you difficulties in operating, wouldn't it?

A. Wait a minute. I don't understand what you mean by "through the union."

Q. You think that these people would have called a strike not through the union? [291]

A. Yes.

Q. You do? A. Yes.

Q. What led you to that belief, Mr. Burns?

A. The activity of the group that was to be laid off in its relationship to the other people in our organization of the same racial extraction.

Q. What was the activity of that group?

A. This constant rumor, pressure, thing. I realize it sounds to you as though we were trying to avoid answering the question but it is not the situation. In a community such as a plantation community, where we all live in one place, we pick up information, as does everybody in it, and I cannot tell you so and so came in and told me that. If it were something of unusual importance that happened once, I would. But at our weekly department head meetings and that sort of thing, this thing was of constant discussion. I call it racial problem in its broad sense. Actually, it is a problem related to this group that was to be laid off

(Testimony of Caleb E. S. Burns.)

and their tie with other employees in our organization. [292]

* * * * *

Q. No. I am talking about the racial group. Now, you have this racial group, the Filipino group primarily, in the field, that you were going to lay off, primarily in the field, which was of concern to you as responsible management as to how they would take this and what the reaction would be? Right? A. That is correct. [293]

* * * * *

Q. When did you first consider that and talk about it in the higher eschelon of management in which you would be operating?

A. You mean the general program of mechanization or the——

Q. The effect upon this particular group [294] of employees who would be most directly affected in the first layoff.

A. Well, I can't pinpoint the exact time. The mechanization program—let me talk about that and then I will give you an idea as to when this probably came in.

Q. Yes.

A. We started talking possible mechanization early in 1951 and it took us a couple of years of working and experimenting to arrive at a method which we felt, from an operations point of view, would be successful.

* * * * *

Q. I realize this was a long range thing; it

(Testimony of Caleb E. S. Burns.)

wasn't something that happened over night. But there was a time when you arrived at the decision that it was feasible to mechanize, that being feasible, you would have to lay off certain people, and who those people would first be who would get the first, bear the first brunt of this layoff, the first impact. Right? A. That's right.

Q. Now, from that point, taking that as the point of departure for the purpose of our examination here, when did you come to that point in your determination that you decided there was going to be a layoff and that these people were the ones that were going to be affected? About when was that?

A. Let us say in December 1952 is when [295] we first got our money, our appropriation, for the mechanical equipment necessary. We knew it would take us, we hoped, 8 or 9 months from that date. We were up against a problem of keeping people cutting cane and operating on the hand-operating basis up to the time when mechanization took place.

* * * * *

Q. When did it first take place; when did you first begin to mechanize?

A. The first mechanical operation started this year. * * * * *

Q. When this year?

A. When we started up in February. February 2nd.

Q. All right.

A. But, to give you a clear picture, when we stopped harvesting, on December 17th, last year,

(Testimony of Caleb E. S. Burns.)

with the end of a large part of our hand operation, so people who were hand-cutters were terminated as of that date because we didn't harvest again until February. [296]

* * * * *

Q. All right. Now let's get to something more concrete, if we can, Mr. Burns. You say you made the decision yourself to discharge Banez?

A. That is correct.

Q. And you arrived at that decision when?

A. I would presume about November first.

* * * * *

Q. Did you look at Banez's work record?

A. Yes. [297]

Q. What did you look at, specifically?

A. I looked at his record as it applied to his job as a truck driver, first of all; what sort of a work record did he have; did he have any accidents, and how was he considered as a truck driver by our operating personnel who are in charge of that operation.

Q. You determined this from the file?

A. That is correct. And also in discussions with Mr. Mair, who was his department head, supervisor.

Q. Does Mr. Mair come in this now?

A. How do you mean "come in now"?

Q. Because I thought you were consulting Mr. West, Mr. Conant, and Mr. Lieth.

A. I also told you we consulted all our department heads.

(Testimony of Caleb E. S. Burns.)

Q. You mean all the department heads listed on Employer's Exhibit 4?

A. Correct. As I said, every Friday morning, when we have a department head meeting, those are the people that we discuss our various problems with. Now, every day, as I told you, we have the top group in for discussion. On this Banez case, Mr. West, Mr. Conant, Mr. Lieth were consulted. They were our top group. In addition I also talked to all the department heads on that matter.

Q. On this matter?

A. That is right. On Banez's discharge. [298]

* * * * *

Trial Examiner: What I want to know—here we have a group of big executives, Mr. Burns, and it doesn't sound very reasonable to me that you were discussing Banez in these executive meetings that you were holding mornings, every morning. Now, when did you start to discuss Banez and when did you end discussing Banez?

A. We discussed Banez off and on from about July or August.

Q. (By Trial Examiner Doyle): Until the time of his discharge? [299]

A. That is correct.

Q. Now, you had these meetings daily?

A. Let's divide the meetings up. First let's call our top group.

Q. All right, let's do that. Whom do you meet with daily?

A. West, Conant and Lieth, at that time.

(Testimony of Caleb E. S. Burns.)

Q. All right. When do you meet with the other men? A. Every Friday.

Q. In your daily meetings how many times a week did you discuss Banez?

A. I don't recall how many times a week.

Q. How many times a month did you discuss Banez?

A. I presume four or five times a month.

Q. I don't want your presumption. What's your best recollection, Mr. Burns? A. Five.

Q. You think you discussed Banez five times a month? A. That is correct.

Q. From June until December?

A. From August.

Q. From August until December.

A. No. May I correct that? From August until we fired him.

Q. That was December 17th, right?

A. Until we *made our* minds to fire him.

Q. You fired him on December 17th? [300]

A. That is correct.

Q. How many times did you discuss Banez in your weekly meetings? Did you discuss him at every meeting?

A. No, not every meeting. I am sure we discussed Banez at least once a month prior to October.

Q. What I am driving at, Mr. Burns, was Banez the most important business of the Olaa Sugar Company and its executive staff of high officials during all this period? A. Very close to it.

(Testimony of Caleb E. S. Burns.)

Q. (By Mr. Karasick): I gather, Mr. Burns, from July or August to the time Banez was discharged in December, you and other high officials of the company discussed his case roughly two dozen times, roughly, or thereabout? Would that be a fair estimate?

A. I think that is correct.

Q. May be a little more, may be a little less?

A. Yes.

* * * * *

Q. (By Mr. Karasick): I think you told us yesterday when this matter came to your attention through the union coming in, you requested Banez's work record and then you took it up with these officials you have told about today, is that right?

A. That is correct. [301]

* * * * *

Q. Did you personally look at it?

A. Yes.

Q. I see. And I take it if it hadn't been for this matter having been brought up on October 19th, you wouldn't have bothered to be looking at Banez's work record, is that right?

* * * * *

A. I don't know.

Q. (By Mr. Karasick): Do you normally—Let me put it this way. How many employees do you have at Olaa Sugar Company, total? [302]

A. About 1100, or we did have at that time.

* * * * *

Q. And you don't go through the work records

(Testimony of Caleb E. S. Burns.)

of these people even periodically unless something comes up which is of enough importance to make you as top man, manager of the plantation, interested, isn't that right? A. That is correct.

Q. So that you wouldn't have looked at Banez's work record unless this matter came up and seemed important to you? Right? A. That is correct.

* * * * *

Q. Isn't it correct, though, Mr. Burns, that this was the first time that you had looked at Banez's work record?

A. It is the first time that I had looked at his record, but I had reports before. [304]

* * * * *

Q. What was your decision based on?

A. The decision to discharge Mr. Banez? Is that your question?

Q. Yes.

A. First, on his record as an operator with us. His background problem associated — while he worked with us.

Q. His background problem. I am going to ask you a little more specific now on that, if I may. Do you want to finish first.

A. Let me finish first.

Q. Surely.

A. The serious effect we would have on our organization if this Filipino problem was allowed to gel, which I have outlined. You understand that. That is the situation of a group of people who certainly indicated they were not going to go along

(Testimony of Caleb E. S. Burns.)

with the layoff program as agreed to between the union and the company.

* * * * *

Q. I would like to direct your attention to a statement you made and ask you to explain it for the record, please. You [309] say this Filipino group indicated they were not going to go along with this layoff program. First of all, who from the Filipino group indicated that to you or any other representative of management?

A. No individual.

Q. All right. How did they indicate it?

A. The way that was indicated to us was through the information that our department heads and operating personnel picked up.

Q. Picked up from whom?

A. I presume in their day to day contacts with workers and people in the organization. It is most difficult to get across to you the tremendous importance we attach to this problem. This is not something that was a smoke screen or anything else. From my experience in the plantation game for almost twenty years, dealing with workers, I was certain in my mind that we had a problem, this growing split in our group of employees, which would completely ruin our program at Olaa. And I mean ruin the whole operation.

Q. It was a pretty critical problem for you, wasn't it?

A. Very critical.

Q. It caused you a great deal of concern, right?

A. Absolutely.

(Testimony of Caleb E. S. Burns.)

Q. Did you make a direct investigation through your department heads or otherwise by going to the Filipino group and inquiring or finding out what the source of this problem was [310] and what the problem was, other than through the rumors or through the news filtering through on the grape vine, as you told us?

A. No, I did not go to the Filipino group.

Q. And you did not direct any of your supervisory staff to either?

A. I certainly did. Our supervisory staff was told to gather all the information they possible could on this problem. I think we all know what we are talking about when we talk about the "problem." This is this large group of people. We did not go directly to the group.

Q. Where did you go, Mr. Burns?

A. Where did I go?

Q. Where did your people go? I know you didn't get out and do it. You delegated it to someone, right?

A. That is correct.

Q. To whom and where did the people who were to investigate this matter—Did they investigate it?

A. The department heads were certainly looking at this problem from, as I have outlined this before, early in July.

Q. Did you direct any investigation of this problem by your department heads?

A. What do you mean by "investigation" in this case?

Q. You say you had a problem.

(Testimony of Caleb E. S. Burns.)

A. That is correct. [311]

Q. You say it was critical.

A. That is right.

Q. It was a matter of great concern.

A. That is right.

Q. Did you make an investigation to see what this problem was about and to get the details of it?

A. The problem was thoroughly talked through so many times that we did not go in to any detailed type of investigation.

Q. The answer is, then, is it not, Mr. Burns, and I merely want to know if this is true or not true, that you did not make an investigation of this problem through your staff or otherwise; isn't that correct?

A. If you speak of a full-dress investigation, you are correct. That statement is right. [312]

* * * * *

Q. (By Trial Examiner Doyle): Now, you say at one point, Mr. Burns, that you and the union had made some agreement as to a layoff procedure.

A. That is correct.

Q. What was that layoff procedure?

A. The original discussion—I will try and make this brief but I would like to give you the story.

Q. Yes. Let me put it this way. Perhaps we can make it brief by questioning you a little further. When you arrived at this layoff procedure, who were the participants in the conference to this agreement? How was it reached? Did you send for the union president or executive committee and

(Testimony of Caleb E. S. Burns.)

say, "Now, we have this problem. We are going to lay off men and we want to do it in an orderly fashion, with your cooperation"? [313]

A. That is just exactly the way the thing went. Now, I don't know when that discussion took place.

Q. From our knowledge of the way things are run in industrial organizations, you can take it for granted we know something about these things, and we would expect it to be done that way. All right. Now then, how were these layoffs to be effected? What I mean is this: What was the agreement between the union and the company? Were you to confer with the union as to who would be laid off in each department? Was that the way in which it was to be done?

A. No. There were general ground rules laid down that it would be on the basis of seniority or ability to do the job, with certain restrictions on the basis of, certain jobs were excluded on the basis of—Oh, like mechanics and skilled artisans and that sort of group did not come into this layoff group or force.

Q. But it was to be done on the basis of seniority and——

A. And ability to do the job.

Q. And ability to do the job?

A. That was the basic deal.

Q. Who was to be the judge of those elements?

A. We were the judge.

Q. You were to judge?

A. We were to judge.

Q. You were to make up seniority lists [314]

(Testimony of Caleb E. S. Burns.)

and you, the company, were to judge the ability of the men?

A. We discussed it with the union. We said, "These guys are the guys that are to go." There was one exception. There was a group of hardship cases. In other words, people with large families and certain hardship deals which were brought in by the union, and they asked us, "Well, can you exclude these guys?" And we said, "Yes."

* * * * *

Q. And as I understand it, now, you made this arrangement, you made this arrangement with the union and from some sources you were informed that a large segment of the workers were dissatisfied with the arrangements made with the [315] union, and yet you tell us that you made no inquiries to that group of employees as to the basis of their complaint? Is that what you tell us?

A. I tell you that we have made no formal investigation. That is correct.

Q. Well, as far as I get it, you understood that these Filipinos were dissatisfied with the arrangement that you had made with the union, and you feared that this disaffection or this disinclination to accept the agreement with the union would be widespread among all your Filipino employees.

A. That is correct.

Q. Yet you made no inquiry directed to them, the Filipino employees, as to what their complaint with the arrangement was. Is that the status? [316]

A. That is the status. * * * * *

(Testimony of Caleb E. S. Burns.)

Q. Just one other question. You answered me before that you talked about Banez on a great many occasions in your high level meetings to the extent of some five times a month. Did you consider that your troubles, in this regard stemmed from Banez's activity?

A. We thought so. And as time went along we became reasonably sure that they did.

Q. You didn't think that perhaps some of it stemmed from the situation itself, that people are reluctant to be laid off and don't like to be laid off?

A. Sure, we knew that.

Q. And they are annoyed when they see other people retained and they are laid off?

A. We knew that.

Q. As far as any action against any one of your employees of over a thousand, the only action taken against any of those was against Banez, is that right? A. That is correct.

Q. Was anybody else disciplined for creating this difficulty or problem? A. No. [317]

Trial Examiner: All right, Mr. Karasick.

Q. (By Mr. Karasick): How many Filipino field workers were there on December—in December, 1953?

A. I *have* the exact figures here. I think I can guess roughly. There were probably 700.

Q. Seven hundred. A. Filipinos?

Q. Filipinos.

A. Pardon me. That's about the total of our field group, I would say.

(Testimony of Caleb E. S. Burns.)

Q. All right.

A. And about 75 percent of that would be Filipinos.

Q. Who were employed during that season?

A. That is correct. [318]

* * * * *

Q. When was the layoff finally accomplished?

A. At the end of our season in 1953; about December 15th or 17th, something along that line.

Q. And at least 30 days and probably more than 30 days before that you managed to get your written letters out to your employees, to set them at rest so they would know where they stood; the ones that were to remain would know they were to remain, the ones that were to be laid off would know they were laid off, is that right?

A. I think we wrote a letter to both groups, the ones that were going to be laid off and the ones who were going to remain. [319]

* * * * *

Q. (By Mr. Karasick): Mr. Burns, you were good enough to check your files with respect to the letters we were speaking about before and you have given me a mimeographed letter of one page, at the bottom of which is in type the word "Sample copy of the letter sent to employees who would be terminated," which I have asked the reporter to mark as General Counsel's Exhibit 19 for identification. I will ask you if that is the form letter which was sent out by you and over your signature for the company to employees who were going

(Testimony of Caleb E. S. Burns.)

to be terminated during the period of time we are talking about?

A. This is the form letter that was sent out to all employees who were laid off.

Q. And the layoff was when you said; it was finally made on or about December 17th, but before that you thought it would [320] be a little early, is that correct? A. That is correct.

Q. And it is so shown by the dates of the letters that you hold, is it not, that you had contemplated an earlier layoff date?

A. That is correct.

Q. I also hand you another mimeographed letter, bearing your mimeographed signature at the bottom, which is typed "Sample copy of letter sent to those who were not going to be terminated," which I have asked the reporter to mark as General Counsel's Exhibit 20 for identification, and ask you if that is a form letter which you sent out to all employees who were going to be retained and not affected by the layoff at that time?

A. Yes. [321]

* * * * *

Q. (By Mr. Karasick): I hand you a mimeographed letter containing certain typewritten material similar to the, as a matter of fact, identical with General Counsel's Exhibit 20 for identification with the exception of the fact that this letter bears the salutation to Mr. Favorito Banez, Olaa, Hawaii, and contains other typewritten matter therein but

(Testimony of Caleb E. S. Burns.)

is otherwise the same as General Counsel's Exhibit 20 for identification. Is that correct?

A. That is correct.

Q. And the letter has a stamped date of October 28, 1953, that I handed you, is that correct?

A. That is correct.

Mr. Karasick: And this letter I have asked the reporter to mark as General Counsel's Exhibit No. 21 for identification. I herewith re-offer General Counsel's Exhibits 19 and 20 and offer General Counsel's Exhibit 21 in evidence. [322]

* * * * *

Trial Examiner: I will overrule the objection and accept the documents and direct that they be marked General Counsel's Exhibits 19, 20, and 21.

[See Exhibit 21 at page 307.]

* * * * *

Q. (By Mr. Karasick): When did the union next talk to you about the problem of Banez after October 19, 1953? A. I don't recall.

Q. How many times between October 19th and December 17, 1953, did they take up that question with you, talk to you about it?

A. About Banez?

Q. Yes.

A. They may have taken it up but I wasn't at any of the meetings. I don't remember being at their meeting where that subject came up again.

Q. But it was reported to you by your subordinates that the union had discussed the matter, either formally or informally, with various company offi-

(Testimony of Caleb E. S. Burns.)

ciala between October 19th and December 17, 1953, was it not? A. Yes. That is correct.

Q. And that was on several occasions at least, would be a fair statement, I take it? I don't ask you to give us the exact number. [323]

A. I really don't know.

Q. It was on more than one occasion, wasn't it?

A. As I recall the chain of events, once we decided to *hire* Mr. Banez, then the question of time came in. When should we do it? Here was a man we had decided to fire. Again, we were back up against the problem of if we took action and at an inopportune time, we may undo just what we were trying—we might create an event which we were trying to keep from happening.

Q. Was the event which you were trying to avoid creating the thwarting the desires of the union so that they might participate in a strike if you didn't fire Banez? A. No.

Q. Nothing like that? A. No.

Q. That never occurred to you, did it?

A. The arrangement we had with the union on the layoffs was agreed to; we had no reason to feel that that would not go along on the basis of our agreement.

Q. May I ask you, Mr. Burns, if you were asking the Examiner here to believe that you had no knowledge of the fact that the union was antagonistic to Banez?

A. No, I am not asking him to believe that.

Q. You knew that the union was?

(Testimony of Caleb E. S. Burns.)

A. Yes. [324]

Q. You knew that they brought this grievance and that they asked you to take action upon it, right?

A. Yes. They claimed that he was violating this section of the contract.

Q. And you knew that the action you would take would be derogatory in some manner or other to Banez's employment?

A. Certainly.

Q. That that would be necessary by the contract?

A. If we took action it would be.

Q. Yes. And ultimately you did take action?

A. That is correct.

Q. And the union did confer with various subordinate officials of the company on and after October 19th and before December 17, 1953, did it not?

A. I am certain they did.

Q. The matter was a rather, putting it in common parlance, a hot one at that time, wasn't it?

A. Certainly. It had been for a long time.

Q. I am talking about the matter of Banez now; are you talking about that, too?

A. I am talking about that problem and the related problem, which in our book is the same.

Q. We are talking about Banez, is that correct?

A. That's correct. [325]

* * * * *

Q. (By Trial Examiner Doyle): So that while no one, as I understand your testimony to be, and correct me if I am wrong, while no one said "We demand the discharge of Banez," at all times it was

(Testimony of Caleb E. S. Burns.)

clearly understood by everybody, as one of the union's men testified, they asked you to enforce section 1 against Banez because they believe Banez had violated section 1 of the contract?

A. They believed Banez had violated section 1 of the contract [326] and so stated to us.

Q. And you knew that their request was to enforce section 1 for either disciplinary action or discharge of Banez?

A. Actually, we had three alternatives: (1) Waive it completely; say we did not think they had any grounds for complaint; (2) to take some disciplinary action; and (3) discharge. Those were the three alternatives we had facing us.

Q. That is right. Well, when you said no request for discharge was made, I thought you meant as you now testify in those exact words, apart from the contract. At all times it seemed to me that everybody here had before them and in contemplation of this contract, and its enforcement.

A. Yes.

Trial Examiner: All right, Mr. Karasick.

Mr. Karasick: Thank you.

Q. (By Mr. Karasick): There at least is no question that the discharge was pursuant to the union's presentation of this matter under section 1 of the contract, as your letter states. Right?

A. That is right.

Q. As your two letters state. Right?

A. That is correct. [327]

* * * * *

(Testimony of Caleb E. S. Burns.)

Cross Examination * * * * *

Q. (By Mr. King): The company dealt with what representatives of the union in discussing this whole problem of the layoffs, who would be retained, who would not, and how were these hardship cases worked up? [330]

A. First of all, the initial discussion were held with the top union leadership, not only at the local level but with the regional director, and the general scheme of the layoffs was discussed and agreed to. Then on the hardship cases we were asked by the local leadership if an exception could be made to hardship cases. I don't know whether it was part of the original discussion or whether it came in shortly thereafter, but nonetheless it was a part of the total deal. And so we went along with hardship cases. And I think those discussions were held both with local leadership and the regional director.

Q. I will try and specify my question a little more, Mr. Burns. Can you tell the Examiner what body or committee the company dealt with as—that is, committee of the union—this company dealt with in this matter?

A. The union appointed a committee for this purpose.

Q. How large was that committee?

A. A relatively small committee.

Q. Approximately how many men, do you recall?

A. The reason why I hesitated to answer immediately was I think first of all it started out with

(Testimony of Caleb E. S. Burns.)

a fairly large committee and ended up with a small working committee. As I recall the group, there were 8 or 10 people, and then they had a small working committee that went over with our industrial relations director the people that were going to be laid off. Everybody knew who they were. [331]

Q. And that was in accordance with the seniority roster that the company carried in its office?

A. That is correct.

Q. Primarily. A. Primarily, that is right.

Q. And would you say it is a fact that in this first layoff in the middle of December the great majority of employees who were laid off were those with least seniority? A. That is correct.

Q. There were some exceptions based on the hardship cases, which involved men with families and so forth?

A. There were two exceptions, really. The hardship cases and the ability-to-do-the-job group. In other words, we had some new mechanics and people of that nature that did not get laid off. But in general it was on a seniority basis.

Q. If there were any stop-work meetings on the plantation so that the entire membership of the unit there, your employees, would meet, you would know about that as manager, wouldn't you?

A. Yes. [332]

* * * * *

Q. Isn't it true that in the early part of 1953 such a stop-work meeting was held for the purpose

(Testimony of Caleb E. S. Burns.)

of the union discussing this whole problem of the layoffs? [333]

* * * * *

A. I know that there was a stop-work meeting for the purpose of the discussion of these layoffs. I do not know the exact time, but I do know such a meeting was held prior to the layoff problem, prior to the layoff.

Q. And it was after that meeting that the union committee on this special problem began to meet with the company, is that correct?

A. Which special problem?

Q. This special problem of the layoffs, because of the conversion from hand harvesting to mechanical harvesting.

A. There were a number of meetings before the meeting of the general membership, I presume, because they were well informed of what the problem was. And a committee was then appointed to deal with us on the specific details of the layoff as I recall it.

Q. I will ask you again whether there was, to your knowledge, such a general stop-work meeting sometime in the month of [334] December, 1953?

A. There was.

Q. And do you know the purpose of that meeting?

A. As I understand, the purpose of the meeting was to ratify the completed layoff arrangement.

Q. And this was before the layoffs actually went into effect?

(Testimony of Caleb E. S. Burns.)

A. I don't know the exact timing of the meeting.

Q. It was about that time?

A. I would presume so, yes.

Q. Let me ask you, Mr. Burns: At this meeting of October 19, 1953, with the union grievance committee that came in on this problem of Mr. Banez, whether you took into consideration the company's duties under section 4 of the contract, which relates to no discrimination for race, creed or color, on the part of either of the contracting parties?

A. I don't understand. [335]

* * * * *

Q. Now, my question was, with respect to section 4, whether that particular section of the contract is what you took into consideration or one of the things you took into consideration in making such a statement?

A. I don't think at that moment I thought of section 4 of the contract, but the no discrimination part of the contract is a matter not only of our contract but it is a matter of our basic approach in dealing with our employees, and without question the racial problem or racial strife is something that we would not tolerate, could not tolerate.

* * * * *

Q. (By Mr. King): You testified, Mr. Burns, as to the problem that the company felt itself faced with, with respect to this racial antagonism, in connection with the proposed layoff. You have that well in mind? A. Yes.

(Testimony of Caleb E. S. Burns.)

Q. What was the anticipated problem that you had in mind?

A. The problem that we had, which I think is quite clear, is the fact that the Filipino group which made up a large part of our field force, which was the production force, the [341] cut cane group, with other people, with other Filipinos, were in a state or were getting, we felt, in a state whereby they would stop working. We, as outlined to you, had to keep a substantial number of these people on up until the deadline, because they were the harvesting people largely. They were also in the mill. But the primary problem was harvesting. And it was the fear on our part of action which would terminate production that was our basic worry, and it continues to be until all this layoff program is completed.

* * * * *

Q. (By Trial Examiner Doyle): Then am I to understand your testimony to be that you felt that there might be a strike or work stoppage by these Filipino workers and that you considered Banez the leader of the Filipino workers, and that therefore you discharged the leader of those employees at the request of the union? A. No.

Q. Well, now, what is your testimony?

A. My testimony is this: that (1) we had a growing difficulty with the Filipino group.

Q. We have been over all that. My point is this: You seem [342] to have feared so many things which were all attributed to Banez so that I would

(Testimony of Caleb E. S. Burns.)

like to know the mental operation of yourself, which has been gone into a great many times, you were on here yesterday and today and now at this point you say you feared a work stoppage which was not controllable by anybody.

A. That's the basic fear we had. Our primary problem was to keep operating at that stage of the game.

Q. Did I misunderstand your testimony all day yesterday, then, that that was your basic fear; that I didn't understand it to be that way at all?

A. I don't see that there is any—we haven't changed our—I haven't changed my testimony at all. I may not have gone on and told you the end product of what we were worried about, because nobody asked me. But the relationship between the Filipino group and employees was not a problem of ours until we were faced with the fact that we wouldn't operate if it continued. [343]

* * * * *

Q. (By Trial Examiner Doyle): I am not quite satisfied, Mr. Burns, with this testimony I have so far. I am not sure that I understand the situation at all. Now, as I understand it, you had reached a satisfactory arrangement with the union as to how these discharges were to be made.

A. That is correct.

Q. However, despite that, you heard rumors that a large segment of your employees were dissatisfied with the arrangements and that these employees were the Filipinos?

A. That is correct.

(Testimony of Caleb E. S. Burns.)

Q. And that Banez was at least one of those who was talking about the arrangement not being fair to the Filipinos? A. That is correct.

Q. And yet you at no time sent for Banez and asked him what he considered unfair about the arrangement or any other of the Filipinos and asked them what they considered unfair about the arrangement? A. That is correct.

Q. You entertained the committee of the union, received their complaint about Banez and their demand that Banez be disciplined or discharged pursuant to section 1, you took no action in regard to having Banez or any of the people who [344] might have been dissatisfied with your arrangement with the union into conference with yourself but discharged Banez, is that right?

A. That is right.

* * * * *

Q. (By Mr. King): Isn't it true, Mr. Burns, at that time, in 1953, the bargaining representative of your employees was the union unit up at Olaa?

A. That is correct.

Q. With whom you dealt in all these problems?

A. That is correct.

Q. And under the contract you could not deal with anyone else? A. That is correct.

Mr. King: That's all.

Trial Examiner: You see, that's the whole difficulty, Mr. King. A few moments ago the tack which you took was that the union and the company could not control these Filipinos and that the company

(Testimony of Caleb E. S. Burns.)

feared they would act without any reference to the union whatsoever, without any reference to the company, and would be sort of a lawless group in their action, [345] or at least take action without consulting the company. Now when they are confronted with this, you say the union was the representative and of course you only talk with the legal representative. That's what makes the situation somewhat un-understandable to me. You can't say at one time that this group is such an outlaw outfit that we fear what they will do and want to protect themselves against them, and yet on the other hand you say, "We have to go to the union; we can't do anything about this." Now, which is it? Are you dealing with a union or a segment of the union, who is a responsible party, or have you just got some nebulous fears, or what do you do in the circumstances? Just call one man in and fire him? It looks to me as though the conduct of the company isn't quite clear here to me.

* * * * *

Recross Examination

Q. (By Mr. Karasick): There were some 700 workers in the field during this past season in question, so far as you knew the majority and maybe all of those people were represented by the union, is that right? [346]

A. They are represented by the union.

Q. There isn't any question in your mind on that point?

* * * * *

(Testimony of Caleb E. S. Burns.)

A. They are the bargaining agent for all the workers. [347]

* * * * *

Q. You will recall that you wrote letters to Banez, telling him why he was discharged. Right?

A. That is correct.

Q. The two letters are General Counsel's Exhibits 15 and 16. Is that right? I hand you the two documents. A. Yes.

Q. It is perfectly correct that in neither of these two letters is there any mention made of section 4 of the agreement, is that not correct?

A. That is correct.

Q. But section 1 is mentioned, is it not?

A. That is correct.

* * * * *

Q. Did anybody at any time bring you information, and if so I want the specific information, that Banez ever told anybody that the layoff problem, policy, contemplated by the company or proposed by the company, was not fair to the Filipinos? [348]

A. We have no specific piece of paper or charge by any one individual. [349]

* * * * *

Redirect Examination * * * * *

Q. (By Mr. Collins): Mr. Burns, yesterday you testified to the effect that you had consulted the work record of Mr. Banez and had concluded that that record was a poor one. Is that correct?

A. That is correct. [357]

* * * * *

(Testimony of Caleb E. S. Burns.)

Q. I will show you the original of the document which has been photographed as Exhibit 7-A for identification. A. Yes.

Q. Was that document considered by you in arriving at your conclusion that Mr. Banez's work record was a poor one? [359]

A. It was.

Mr. Collins: I offer the exhibit marked 7-A for identification in evidence. [360]

* * * * *

Trial Examiner: That's right and that is the only reason for which I am receiving it.

(The document referred to, previously marked Employer's Exhibit 7-A, for identification, was received in evidence.)

[See page 311.]

Q. (By Mr. Collins): I believe you have testified that among the various documents constituting the work record of Mr. Banez which you examined, based upon which you reached the conclusion that he had a poor work record, was the document which has been received in evidence as Exhibit 7-A. I now show you a document which has been marked for identification as Exhibit 7-B, and ask you whether you have considered this document as part of that work record in reaching that conclusion?

A. Yes.

Mr. Collins: I offer the photographic reproduction of that document in evidence.

* * * * *

Trial Examiner: I will overrule the objection

(Testimony of Caleb E. S. Burns.)

and receive the document which is designated Employer's Exhibit 7-B for [364] the same limited purpose as stated in regard to the prior document.

(The document referred to, previously marked Employer's Exhibit 7-B for identification, was received in evidence.)

[See page 312.]

Q. (By Mr. Collins): Now, I show you a document which is marked Employer's Exhibit 7-C for identification, and ask you if this similarly is the same type of document found in the record upon which you based the same conclusion?

* * * * *

A. Yes.

Mr. Collins: I offer the photographic reproduction of that document as Exhibit 7-C.

Trial Examiner: I take it there is the same objection, and the same ruling, and it shall be received and marked Employer's Exhibit 7-C in evidence. This document is also received for the same purpose as stated by myself previously.

(The document referred to, previously marked Employer's Exhibit 7-C for identification, was received in evidence.)

[See page 312.]

Q. (By Mr. Collins): I now show you a document which has been marked Employer's Exhibit 7-D for identification, and ask you whether this document likewise was taken from the work record of

(Testimony of Caleb E. S. Burns.)

Mr. Banez and likewise is a document upon which you [365] based your conclusion that he had a poor work record.

A. Yes, this is the statement I reviewed.

Mr. Collins: This document has been photographed and has been marked by the reporter as 7-D on the first page and 7-E on the second page.

I offer this combined exhibit in evidence. [366]

* * * * *

Trial Examiner: I am going to overrule the objection and accept the document.

* * * * *

(The document previously marked Employer's Exhibits 7-D and 7-E was received in evidence. [367])

[See pages 313-314.]

* * * * *

(The documents referred to, Employer's Exhibits 7-G and 7-G for identification were received in evidence.) [368]

[See pages 315-316.]

* * * * *

Trial Examiner: Received in evidence and marked Employer's Exhibits 8-A and B.

(The documents previously marked Employer's Exhibits 8-A and B for identification were received in evidence.) [369]

[See page 317.]

(Testimony of Caleb E. S. Burns.)

Recross Examination

* * * * *

Q. (By Mr. Karasick): As his personnel record shows, there were certain advances and progressions in rate of pay and jobs, both before and after the various documents the respondent employer has introduced in evidence as Employer's Exhibits 7-A through 7-G, and those, for your information, are the disciplinary notices and [370] the various reports, both before and after those reports were made or those actions taken. Right?

A. Yes, I think that's true.

Q. Do you remember Mr. Banez being at one point confined to the hospital and thereafter, I think this was back in 1947 or '48, working in the hospital for a while?

A. Yes, I recall the record generally on that generally. That is what I understood it to be.

Q. Some sort of hospital attendant, is that correct?

A. That is so.

Q. And he worked there until there was a reduction in staff which necessitated the layoff of others and himself included. Right?

A. I believe that is correct. The hospital operation was reduced in scale and people were placed elsewhere in the plantation.

Q. And there is a notation of that—Pardon me. After that he was given another job with the company. Right?

A. Yes. Or transferred to another job.

Q. To another job. Yes. And then there was a

(Testimony of Caleb E. S. Burns.)

notation made in the file by the doctors in charge on August 18, 1948, with regard to Banez, is that not correct? A. Yes.

Q. And that notation said he was doing good work, including technical jobs? [371]

A. That is correct. [372]

* * * * *

Q. The company has a newspaper which it publishes from time to time, known as the Olaa News, has it not? A. That is correct.

Q. And is that paper published at the present time? A. Yes.

Q. How frequently?

A. Once a month, I believe.

Q. And has that been true for the past two or three years or more? A. I think it has.

Q. I direct your attention to a copy of the Olaa News for October 1953, which Mr. Collins has been good enough to produce, and call your attention to an article on the first page of that printed paper which contains the headline in bold type "Eighteen men promoted during August and September."

A. Yes.

Q. Is that correct?

A. That is correct. [373]

Q. Am I reading correctly from that, immediately thereafter the article begins, "The following employees were promoted during August and September: Favorito Banez, transportation handyman to senior cane truck driver."

A. That is correct.

(Testimony of Caleb E. S. Burns.)

Q. And that is the same Banez who is involved in these proceedings as complainant?

A. That is correct.

Trial Examiner: What date was that, Mr. Karasick?

Mr. Karasick: That was in the October 1952 issue of the newspaper. [374]

* * * * *

FAVORITO P. BANEZ

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination [386]

* * * * *

Q. (By Mr. Karasick): You worked for the Olaa Sugar Company from January 1946 to December 17, 1953? A. That is right.

Q. In one capacity or another?

A. That's right.

Q. Do you remember, were you a member of the union when you first went to work for the company?

A. Yes, sir.

Q. By "the union" I mean ILWU, local 142?

A. Yes, sir.

Q. How long did you remain a member of the union?

A. Until the last part of 1951, I guess. That was when I was to take that cane truck driving job, new cane truck driving job. [387]

* * * * *

(Testimony of Favorito P. Banez.)

Q. In 1951, the latter part of 1951, from that time on, did you ever again sign a new check off authorization? A. I didn't.

* * * * *

Q. So, as I understand it, you were not a member of the union [388] in any way about that time until the time you were fired. Right?

A. That is right, sir. [389]

* * * * *

Q. (By Mr. Karasick): Did the union put out a bulletin with respect to the union shop issue with the company in 1951? A. Yes, sir.

* * * * *

Q. (By Mr. Karasick): I hand you a document entitled "Sugar Bulletin, Official, No. 1," issued by the ILWU, Local 142, June 6, 1951, which is a mimeographed document of one page, which I ask the reporter to mark as General Counsel's Exhibit 22 for identification, and ask you if that is one of the bulletins issued by the union on or about the date it bears with respect to the union's position concerning the union shop, as you understand it?

A. That is right. [392]

* * * * *

Q. (By Mr. Karasick): Were you opposed to the union shop?

A. I was entirely opposed. [393]

* * * * *

Q. (By Mr. Karasick): The question was, Mr. Banez: Did any official of the union talk to you

(Testimony of Favorito P. Banez.)

about your opposition to the union shop after that bulletin was issued?

* * * * *

A. Yes, sir.

Q. (By Mr. Karasick): Who was it?

A. It was Arakaki.

Q. The same man who testified here?

A. Yes, sir.

Q. Yasuki Arakaki? A. Yes, sir.

Q. And he talked to you about your opposition to the bulletin? Just answer yes or no. [395]

A. Yes, sir.

Q. It was some time after it was issued. Right?

A. Yes, sir. [396]

* * * * *

Q. (By Mr. Karasick): Mr. Banez, I hand you General Counsel's Exhibit 15, which is a letter notifying you of the fact that——

A. December 17, you mean?

Q. December 17, 1953, which is notice to you that your services were terminated by the company. When did you receive that letter?

A. On the afternoon of December 16. Yes, December 16. [410]

* * * * *

Q. Did you later see Mr. West? [411]

A. Yes. Later on.

Q. And was that on or about December 23, 1953?

A. About that.

Q. Where did you see Mr. West?

A. In his office.

(Testimony of Favorito P. Banez.)

Q. Who else was present?

A. It was only Mr. West in his office.

Q. Just the two of you? A. Yes, sir.

Q. Will you tell the Examiner as well as you can recall what the conversation was between the two of you on that day, and indicate whether you were talking or Mr. West was talking when you tell us what was said.

A. I went to him on that afternoon, asking him why I took that discharge paper, since I didn't ever know that I did anything wrong, at that very moment I received that discharge paper.

Q. Is what you are saying that you didn't until that moment know that you had done anything wrong? A. Yes, sir.

Q. And the moment is when you got the notice of discharge, is that right? A. Yes, sir.

Q. Is what you are saying that nobody ever talked to you about this before? [412]

A. Nobody. Nobody once.

Q. Had you received any warning from the company before? A. I didn't.

Q. Had not. Go on.

A. And I asked him the reason why and he related the facts that it was from the union, headed by Arakaki, it was a group of Filipinos headed by Arakaki who went to the office and file a grievance against me that I was disrupting the harmonious relationship of the workers.

Q. Do you recall anything else he said?

A. And he further state that I was—that griev-

(Testimony of Favorito P. Banez.)

ance was about the complaint against me that I was making or organizing another union. Also, that I was—that grievance was about me making or—yes, making camp meetings with the union members.

Q. Do you recall anything else he said in that connection?

A. And also he told me was a part of that grievance, he told me that I was claimed by the union that I went to see Bert Nakano; who that fellow was I don't know at that time.

Q. You say you don't know who the——

A. I didn't even know that time, who Bert Nakano. [413]

* * * * *

Q. (By Mr. Karasick): Did Mr. West at any time during this meeting make any mention to you of your work record?

A. No, sir. [415]

* * * * *

Q. (By Mr. Karasick): What else did Mr. West say to you at this meeting?

A. Relating to me those grievances filed by the union against me. I told him, "Don't you think, Mr. West, that this grievance was a kind of frame up?" That is what I said.

Q. Did he reply? [416]

A. He replied, he shook his shoulder and his mind, see.

Q. He shrugged his shoulders, is that what you mean?

A. That I don't know. That's what he said, see. (Indicating.)

(Testimony of Favorito P. Banez.)

Q. Did he say anything else to you?

A. He advised me if I was not contented the answers he had given at that time I could file my grievance, see, according to the grievance machinery, but if I would not be satisfied with the grievance and would go to arbitration, he further told me that it would cost me big money, see. [417]

* * * * *

Cross Examination

Q. (By Mr. Collins): Mr. Banez, I direct your attention to the meeting with Mr. West, to which you referred as happening on or about December 23, 1953. I ask you to state exactly what was said by yourself, by Mr. West, concerning your discharge. [423]

* * * * *

A. On December 16 I was discharged; they handed me that discharge paper. When I went on that December 23rd to ask what was going on about that discharge they handed me, they told me that the union claimed, headed by Arakaki, with a group of 23 men——

* * * * *

Q. (By Mr. Collins): Go ahead, please.

A. Twenty-three men, filed grievance against me that I was disrupting the harmonious relationship of the workers. Further he said the union claimed that I was making another union.

* * * * *

A. (Continuing): Making camp meetings. I

(Testimony of Favorito P. Banez.)

went to see Bert Nakano. Who I didn't know at that time, who was Bert Nakano.

I asked Mr. West if those grievances were not a frame up.

* * * * *

A. He shook his shoulder and he smiled. And after that he advised me that if I was not contented of that reason he has given me at that time I would file my grievance through the grievance procedure. [424]

* * * * *

Q. (By Trial Examiner): Did you file a grievance? A. I didn't.

* * * * *

Q. If anything else was said by you or Mr. West at that meeting we want to hear what it was.

A. That if I would file my grievance, I would go to arbitration, but if I would go to arbitration it would cost me big money, so that I did not continue filing my grievance. And furthermore, what Mr. West told me was even though I won, or even though I would be successful in the grievance, it would be useless just the same. [426]

* * * * *

NELSON L. WEST

a witness called by and on behalf of respondent employer, Olaa Sugar Company, Ltd., having been previously duly sworn, was examined and further testified as follows:

(Testimony of Nelson L. West.)

Direct Examination

* * * * *

Q. (By Mr. Collins): Do you recall a meeting with Mr. Banez on or about December 23, 1953?

A. Yes, I do.

Q. Will you tell the Examiner as best you can recollect exactly what Mr. Banez said to you and what you said to Mr. Banez at that meeting?

A. Mr. Banez came to see me. He originally asked for a meeting with Mr. Burns. Mr. Burns was in Honolulu at the time that Mr. Banez wanted to see him, and he asked me to interview Banez in his stead. Mr. Banez came to my office, it was in the afternoon if I recollect right, and asked me why he was discharged. I told Mr. Banez that the union had filed or had brought up a grievance to the company and we had held at their request a meeting, that there were some twenty-odd members present at this meeting, and they had brought out at this meeting that he — Banez — was disrupting harmonious relationships with the company, by circulating petition against the officers of the union and was fostering racial discontent among the Filipinos, claiming that the Japanese were getting all the breaks in this layoff procedure that we were in the middle of.

I also told Mr. Banez that his work record at Olaa had been very poor. And Mr. Banez reviewed his long disagreement with the union over many issues which he brought out, such as the union shop, claiming that the union officers were out to get him,

(Testimony of Nelson L. West.)

and had brought this action against him for that reason. I told him that it was no concern to the company what the internal affairs of the union were and we were not interested [428] in it, but we were sincerely disturbed by this charge of racial, stirring up of racial discontent.

Mr. Banez asked me what he could do in regard to this discharge. I told him that the steps of the grievance procedure were open to him. I also told him that if he took the grievance procedure to its final conclusion, which would be arbitration, that he could not possibly expect the union to pay for the cost of the arbitration since they had brought these charges against him, and that it would cost him, would be of some cost to him to take this matter to arbitration.

Mr. Banez asked me whether there was any charges made by other than the officers. I told him that there were approximately twenty people there and that various members of this union committee had stood up and given testimony in regard to his actions. That testimony was covered by Mr. Isherwood in his testimony and is correct as he gave it.

I also told Mr. Banez that if he took this matter through arbitration and was successful in regaining employment with the company, that he would still have to live with the people on the plantation there, and giving him a little advice I said that he would probably be happier if he didn't spend this money to go to arbitration and maybe attempted to find employment elsewhere.

(Testimony of Nelson L. West.)

Mr. Banez agreed with me, said that he wanted to stay and fight the union, bringing up other matters such, as he [429] put it, communist led union; that they were out to get him and he was there, was going to stay there, and fight this matter to a final conclusion.

I think in general that is the gist of the meeting.

* * * * *

(Whereupon, at 4:30 p.m., August 25, 1954, the hearing was closed.) [449]

GENERAL COUNSEL'S EXHIBIT No. 14

Agreement Between Olaa Sugar Company, Limited and United Sugar Workers, I.L.W.U., Local 142, Effective September 1, 1951, As Amended October 29, 1952.

* * * * *

SECTION 1

Recognition and Union Security

The Company recognizes the Union as the sole and exclusive collective bargaining agent for all of the employees covered by this agreement.

The Company further recognizes the rights and obligations of the Union to negotiate wages, hours and conditions of employment, and to administer this agreement on behalf of all covered employees.

The Company recognizes the right of the Union to be present at the adjustment of any grievance arising under this agreement. The Company shall

notify the Union promptly of any grievance filed in writing or at Step 2 of the grievance procedure in any event, and shall provide an opportunity for a Union observer to be present at the adjustment of such grievance.

The Company and its representatives will not undermine the Union or promote or finance any competing labor organization.

The Company and its representatives will not interfere with the right of any employee to join the Union, and will make known to all employees that they will secure no advantage, more favorable consideration, or any form of special privilege because of non-membership in the Union.

The Company and its representatives will make known to all employees its policies and commitments as set forth above with respect to recognition of the Union and that employees in the bargaining units should give the utmost consideration to supporting and participating in collective bargaining and contract administration functions. New hires shall be given a copy of the agreement and advised of the Company policy on recognition and union security. All Company and Union representatives will make every reasonable effort to settle grievances and contract problems in a way to promote orderly administration of the agreement.

Any claim that the Company has shown favoritism or granted special privileges to a non-union employee in violation of the agreement shall take priority over other pending grievances.

Any claim by the Union that action on the job of

a non-union employee covered by this agreement is disrupting harmonious working relations may be taken up as a grievance. Repeated disruption of harmonious working relations shall be grounds for discipline or discharge.

It is recognized that the limitations set forth herein relate only to actions on the job.

SECTION 2

Duration

This agreement shall become effective on the date of its execution and shall remain in effect until August 31, 1954. It shall be deemed renewed thereafter from year to year unless either party hereto gives written notice to the other party hereto of its desire to amend, modify or terminate the same, which notice shall be served not earlier than seventy-five (75) days nor later than sixty (60) days prior to said expiration date, in which event negotiations shall begin within fifteen (15) days from date of notice.

* * * * *

SECTION 3

Employee Coverage

The employees covered by this agreement are all production, maintenance and agricultural employees of the Company with the exception of employees in those categories which are specifically excluded in subsection (e) hereof. Such covered employees are divided into the following designated bargaining units:

(a) Unit 1. Those employees of the Company (1) engaged in transportation; (2) engaged in and about the processing mill and mill yard, including such operations as scaling, loading, unloading, washing, handling, cleaning, grinding, heating, liming, clarification, filtration, evaporation, graining, drying, bagging, sewing, shipping, warehousing and delivery, molasses handling, and chemical control, steam and power production, including hydroelectric plant employees; (3) engaged in repair, maintenance and new construction;

(b) Unit 2. Those employees of the Company engaged in grounds and village maintenance and services, merchandising, and employees in the milk room on dairy ranches, and milk delivery employees;

(c) Unit 3. Those agricultural employees of the Company who are engaged in clearing and preparation of land, preparation and transportation of seed, planting, cultivating, irrigating, fertilizing, spraying with herbicides and insecticides, harvesting, including the loading of the agricultural products onto the initial means of transporting them from the fields, and the care of animals used in cultivating and harvesting; and also employees in ranch and dairy operations, except employees in the milk room on dairy ranches and employees engaged in milk delivery;

(d) Unit 4. The employees of the Company engaged in operations within Unit 4 as established in the election conducted by the National Labor Rela-

tions Board, while such employees are holders of jobs listed in Exhibit B-1 hereof;

* * * * *

SECTION 16

Stop-Work Meetings

At the written request of the Union made at least one (1) week in advance, a stop-work meeting of not more than four (4) hours' duration shall be arranged for all employees covered by this agreement. There shall be not more than three (3) stop-work meetings during each contract year; provided, however, any stop-work meeting held for the purpose of ratifying a new agreement between the Company and the Union may be held in addition to the three (3) stop-work meetings hereinbefore specified. The date and hour of such meeting shall be arranged by mutual agreement between the Company and the Union. The Company shall not schedule any work during such meetings except work necessary for the health and safety of employees and their dependents, and work necessary for the safety of equipment or the preservation of materials in process. If employees attending the meeting are required to return to work thereafter, they shall return promptly. Where other means are not available, the Company will cooperate in making transportation available. However, the cost of providing transportation in excess of normal transportation to and from work will be borne by the Union. Employees shall not receive any compensation for hours not worked.

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 15

Olaa Sugar Company, Limited
Olaa, Hawaii, T. H.

Mr. Favorito Banez December 17, 1953
Olaa, Hawaii

Dear Sir:

This will be notice to you that your services will no longer be required by Olaa Sugar Co., Ltd. on and after December 17, 1953.

This action is taken as a result of your actions in violation of Section 1 (Recognition and Union Security) of the Agreement between Olaa Sugar Co., Ltd. and the United Sugar Workers, ILWU Local 142, as brought to our attention by the Union.

Yours truly,

OLAA SUGAR COMPANY,
LIMITED,
/s/ C. E. S. BURNS, JR.,
Manager.

NLW:kn

GENERAL COUNSEL'S EXHIBIT No. 16

Olaa Sugar Company, Limited
Olaa, Hawaii, T. H.

Mr. Favorito P. Banez January 7, 1954
P. O. Box 332 Olaa, T. H.

Dear Sir:

The reason for your discharge as of December 17, 1953 was as stated in our letter of December 17,

1953 — violation of Section 1 (Recognition and Union Security) of the Agreement between this company and the United Sugar Workers, ILWU Local 142, as brought to our attention by the Union.

The details of this violation, as presented to us by the Union, were explained to you at the time of your meeting with Assistant Manager West on December 23, 1953.

Very truly yours,

OLAA SUGAR COMPANY,
LIMITED,

/s/ C. E. S. BURNS, JR.,
Manager.

CESBjr:kn

GENERAL COUNSEL'S EXHIBIT No. 17-A

Olaa Sugar Company, Limited
Independent Grower Agreement

* * * * *

Witnesseth: That The Mill, in consideration of the covenants and agreements of the Grower, hereinafter contained, and of the sum of Ten Dollars (\$10.00) to the Mill paid by the Grower, receipt whereof is hereby acknowledged, does covenant and agree with the Grower as follows:

Section 1. Purchase of Cane — Description of Land—Term of Agreement: That the Mill will purchase from the Grower all sound, mature sugar cane of varieties approved by the Mill (excluding all dry and sour sugar cane, tops, leaves, earth, trash and

other extraneous matter, hereinafter called "tare") grown, brought to maturity, cut and piled by the Grower or for his account, as herein provided, on that piece or parcel of land (which the Grower warrants to be under his ownership or control) situated in the District of Puna, County of Hawaii, containing an area of acres, more or less and more particularly described as follows:

for such period as will be required to complete the growing and to harvest and deliver the crop or crops of sugar cane now being and growing upon the said land at the date hereof, and thereafter from crop to crop unless written notice of the termination of this agreement as to any subsequent crop shall have been given by either party hereto to the other at a time prior to or within thirty (30) days after the completion of harvesting of any crop grown hereunder.

Section 2. Delivery — Loading — Transporting: That the Mill will take delivery of the crop or crops of sugar cane now growing or to be grown during the term hereof, cut and piled by the Grower (or cut and piled by the Mill at his request and expense) on slings within three hundred (300) feet of a passable road as provided herein upon the land covered hereby, providing and delivering cable slings to roadsides as necessary, maintaining field roads, hauling sugar cane bundles to roadsides, loading said bundles on to trucks provided by the Mill and transporting said sugar cane to the factory of the Mill at the expense of the Mill, all at the time or

times designated by the Mill feasibly nearest to the time of maturity of said crop or crops having due and equitable regard for the crops of the Mill and of other Growers whose crops shall mature at approximately the same time, and also having due and equitable regard for suspensions of this agreement arising under Section 14 hereof and for such Governmental regulations or voluntary agreements as may affect the annual quota of sugar allocated to the Hawaiian sugar industry or to the individual farming units.

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 17-B

Olaa Sugar Company, Limited

Temporary Amendment to Independent Grower
Agreement

* * * * *

Witnesseth: That, in consideration of the mutual covenants herein and in the abovementioned Independent Grower Agreement contained, the Mill and the Grower do mutually agree that the said agreement, as previously twice amended, shall be and it is hereby temporarily amended in the following manner:

(1) Section 1 is hereby amended to read as follows: "Section 1. Purchase of Cane—Description of Land—Term of Agreement: That the Mill will purchase from the Grower all sound, mature sugar cane of varieties approved by the Mill (excluding all dry and sour sugar cane, tops, leaves, earth,

trash and other extraneous matter, hereinafter called "tare") grown, brought to maturity, cut and piled by the Grower for his account or mechanically harvested, all as herein provided, on that piece or parcel of land (which the Grower warrants to be under his ownership or control) situated in the County and Territory of Hawaii, containing an area of acres, more or less, and more particularly described as follows:

for such period as will be required to complete the growing and to deliver the crop or crops of sugar cane now being and growing upon the said land at the date hereof, and thereafter from crop to crop unless written notice of the termination of this agreement as to any subsequent crop shall have been given by either party hereto to the other at a time prior to or within thirty (30) days after the completion of harvesting of any crop grown hereunder".

(2) Section 2 is hereby amended to read as follows: "Section 2. Delivery — Harvesting — Transporting: That the Mill will take delivery of the crop or crops of sugar cane now growing or to be grown during the term hereof, cut and piled by the Grower on slings within three hundred (300) feet of a passable road as provided herein upon the land covered hereby, furnishing and delivering cable slings to roadsides as necessary, maintaining field roads, hauling sugar cane bundles to roadsides, loading said bundles on to vehicles provided by the Mill and transporting said sugar cane to the factory of the

Mill at the expense of the Mill, all at the time or times designated by the Mill feasibly nearest to the time of maturity of the said crop or crops, having due and equitable regard for the crops of the Mill and of other growers whose crops shall mature at approximately the same time, and also having due and equitable regard for suspensions of this agreement covered by Section 14 hereof and for such Governmental regulations or voluntary agreements as may affect the annual quota of sugar allocated to the Hawaiian sugar industry or to its individual farming units, provided however, that should the Mill undertake to perform the harvesting operations required of the Grower herein at the request of the said Grower, then in every such case the Mill shall have the right, in its sole discretion, to determine the method whereby the said operations shall be performed, either by hand cutting and piling as described herein, in which case the said operations shall be fully at the expense of the Grower and delivery of the said sugar cane shall be taken by the Mill at the point above described, or alternatively by such mechanical methods as the Mill may select, in which case such harvesting operations shall be fully at the expense of the Mill and delivery of said sugar cane shall be taken by the Mill at the point of severance from the ground of the said crop or crops at time of harvest, and subsequent loading and transporting operations shall be performed by the Mill at its expense by any methods compatible with the selected method of mechanical harvesting”.

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 21

Olaa Sugar Company, Limited
Olaa, Hawaii

Mr. Favorito Banez

October 28, 1953

Olaa
Hawaii

Dear Mr. Banez:

As of the present date, it is anticipated that Mechanical Harvesting will become effective on or about November 15, 1953. On the effective date, all of the necessary changes in personnel will also be made. You will be notified by your Supervisor as to the exact date of the changeover. On that date you will be assigned to the job of Sr. Cane Truck Driver and your supervisor will be Mr. Furukawa.

Very truly yours,

OLAA SUGAR COMPANY,
LIMITED,
/s/ C. E. S. BURNS, JR.,
Manager.

MOI:hn

EMPLOYER'S EXHIBIT No. 5

Job Description

Date: June 9, 1952

Olaa Sugar Company, Limited

Job Title: Senior Cane Truck Driver

Department in Which Job Is Located: Harvesting

Summary of the Job: Under general supervision,

drives a cane truck pulling a full trailer with payload capacity equal to or greater than that of the truck; hauls cane between harvesting field and Mill Yard; does other work as directed by supervisor

Work Performed:

1. Drives a cane truck under variable conditions on highways, plantation roads and fields, pulling a trailer from harvesting field to mill yard, total load approximately twenty-four (24) tons.

2. Observes all safety rules and regulations; drives carefully, maintaining proper prescribed speed at all times.

3. Maintains proper air pressure in tires, works with tireman in the changing of tires as necessary; observes oil pressure and temperature gauges; checks fuel supply and crankcase oil; occasionally cleans truck; services truck by filling radiator with water; makes minor repairs and adjustments such as tightening loose bolts and nuts.

4. Trims, with cane knife, cane protruding from sides of cane truck.

5. Unloosens sling hooks on cane bundles as required, helps with Tomonaga hooks, and removes empty slings from boom chain hooks.

6. After cane bundles have been removed from truck, cleans out truck compartments by using pitchfork and/or by hand.

7. Reports to supervisor all mechanical defects requiring repair by motor mechanics.

8. Occasionally tows other equipment as required.

9. Assists motor mechanics in the capacity of a helper while truck is being repaired.

10. Does other work as directed by supervisor.

Supervision Received: General from supervisor.

Tools Used: None.

Equipment Used: Truck, trailer, cables (slings), cane knife, pitchfork.

Materials Used: Gasoline, oil, and water.

Reports and Records Prepared: Daily truck report.

Education Required: Read, write, and speak English.

Experience Required: Approximately one year on the job to perform work satisfactorily; ability to operate heavy cane truck with semi and full trailer; County of Hawaii vehicle operator's license.

Initiative Required: Very little—routine work.

Physical Effort Required: Continuous driving of heavy cane truck with fully loaded semi and full trailer.

Mental Effort Required: Ability to follow instructions; attention to gauges and mechanical operation of truck while driving.

Visual Attention Required: Continuous while driving on field and main roads in order to minimize accidents.

Resp. for Tools and Equipment: Proper use and care of truck, trailers and sling, cane knife, and pitchfork.

Resp. for Material and Product: Proper operation of unit to prevent excessive wear of truck due

to carelessness; prompt delivery of cane from harvest field to mill yard.

Resp. for Confidential Data: None.

Resp. for Reports and Records: Daily truck reports.

Working Conditions: Continuous driving; continuous vibration or noise; occasionally dusty; occasionally hot; constricted working space; drives truck in all kinds of weather and over various types of roads.

Unavoidable Hazards: Subject to lost-time accidents such as cuts, bruises, broken bones and eye injury; ditching, jack-knifing, or overturning of truck and trailer due to poorly constructed road shoulders; tire blow-outs.

Job Description Prepared by: JDC. Approved: MOI.

EMPLOYER'S EXHIBIT No. 6

Figures for Year 1953

Total traveling hours of trucks: 33,632

Total truck trips: 25,913

Average traveling hours per truck trip: $33,632 \div 25,913 = 78$ minutes

Average time from arrival of truck at field to completion of loading: 59.07 minutes

Travel Time per trip: 78 minutes

Unloading Time per trip: 18.11 minutes

Average time of complete trip: 2 hrs. 35.18 minutes = 155.18 min.

Percent of trip time spent in actual travel: $78 / 155.18 = 50.27\%$

Percent of time in fields loading and unloading
exclusive of transportation over farm roads: 49.73%

EMPLOYER'S EXHIBIT No. 7-A

Olaa Sugar Company, Limited

Date: July 24, 1953

Disciplinary Lay-Off

Employee's Name: Favorito Banez; Work No.:
1956; Dept.: Harvesting.

* * * * *

You are hereby suspended without pay for a
period of Two (2) days effective July 27, 1953 for
the following reason:

On July 12, 1953 you were involved in an accident
caused by your entering the Pahoa road from a side
road, causing considerable damage to a private car.

Should you not report for work on July 29, 1953
or when notified, or notify your Supervisor of your
inability to report your absence will be considered
your resignation and your name will be dropped
from the seniority roster.

/s/ FAVORITO P. BANEZ

Employee's Signature

/s/ T. FURUKAWA,

Supervisor

/s/ GEO. MAIR,

Department Head

(Refused to sign),

Steward's Signature

/s/ M. O. I.,

Ind. Rel. Dept.

EMPLOYER'S EXHIBIT No. 7-B

Olaa Sugar Company, Limited

Date: 10/9/50

Disciplinary Lay-Off

Employee's Name: F. Baniez; Work No.: 1956;
Dept.: Mill.

You are hereby suspended without pay for a period of Two Days and 2 Hrs. effective at 1:00 p.m. Oct. 9, 1950, for the following reasons:

Fighting on the job, and inflicting bodily injury.

Should you not report for work on Oct. 12 or when notified, or notify your Supervisor of your inability to report, your absence will be considered your resignation and your name will be dropped from the seniority roster.

/s/ FAVORITO P. BANEZ,

Employee's Signature

/s/ P. P. FRENDON, SR.,

Supervisor

/s/ WM. LEITH,

Department Head

/s/ M. O. I.,

Ind. Rel. Dept.

EMPLOYER'S EXHIBIT No. 7-C

Olaa Sugar Company, Limited

Date: Dec. 16, 1952

Disciplinary Lay-Off

Employee's Name: F. P. Baniez; Work No.: 1956; Dept.: Harvesting.

You are hereby suspended without pay for a period of One (1) Day effective Dec. 17, 1952 for the following reasons:

Negligence; dragging full load of cane for three miles with semi-trailer's left dual tires and wheels detached and load riding on brakedrum, swaying precariously.

Should you not report for work on Dec. 18, 1952 or when notified, or notify your Supervisor of your inability to report, your absence will be considered your resignation and your name will be dropped from the seniority roster.

/s/ FAVORITO P. BANEZ,

Employee's Signature

/s/ T. FURUKAWA,

Supervisor

/s/ GEO. MAIR,

Department Head

/s/ M. O. I.,

Ind. Rel. Dept.

EMPLOYER'S EXHIBIT No. 7-D-E

Aug. 28, 1952

George Mair, Harvesting Supt.

Yesterday on 2nd shift, on Mt. View Run, #1956 F. P. Baniez, driving truck 600 with trailers 1809 and 1916. The first driver to leave for Mt. View at 1:30 was directed by myself to go into Kulani Rd. and watch and follow arrows pointing the way into the harvesting field and to the loader. Baniez went

up to Kulani Road okay but missed the arrow leading to the loader and came on down until he came out on the Volcano Road. Instead of going back up to Kulani Road again, came down to Mill Yard empty. On checking with Checker K. Kamei on radio, Kamei said he personally checked arrows and they were all okay. On hearing this I strongly reprimanded Baniez and told him to go back and watch arrows closely and that he should have known better, that on missing the arrows and on coming out on Volcano Road, he should have gone back to Kulani Road and find the right arrow.

I found out later that Baniez on going back to Kulani Road could not find arrow leading down into the harvesting field and he was waiting on the road until Mr. Conant came along and he had to lead Baniez into the field. Loader waited 47 minutes for 2nd truck and Baniez reached loader at 3:27 p.m. whereas he should have been there at about 2:10 p.m.

Baniez had no excuses to miss arrows because arrows were all posted and he was 3 days on this Mt. View Run already. Baniez does not admit that he missed arrows but that arrows were not there so he was strongly advised to admit when he makes a mistake like a man and today, before he left for Mt. View, I told him to watch arrows closely and listen to instructions until he understands them and that if anything like this happens again, he will be suspended or some other action will be taken.

/s/ T. FURUKAWA

EMPLOYER'S EXHIBIT No. 7-F

Aug. 8, 1952

George Mair, Harvesting Supt.

Last night on the 2nd shift, #1956, F. P. Baniez driving truck 609 with trailers 1801 and 1903, leaving empty from mill yard for Field 8- Mt. View, went up until the Kesan Store with 2 wheels on full trailer locked. He forced truck to go ahead because with 2 wheels not turning around a driver is supposed to feel the weight on his steering wheel. He stopped at Kesan Store because he heard a tire blow out and when the tire boy went up to repair it, he found 2 tires flat caused by wheels not turning. This 2 tires was thrown away because it was worn out only in one place and could not be used.

Baniez was strongly reprimanded verbally by (illegible) and myself and was told that we did not want anything like this to happen again because it involves lots of money and time wasted. I advised him to stop and check if he thinks or feels anything wrong with the operations of his truck.

/s/ T. FURUKAWA

EMPLOYER'S EXHIBIT No. 7-G

April 2, 1952

Mr. George Mair, Harvesting Supt.

Last night on 2nd shift, Mt. View Run, Field 6 #1956, F. Banez, a trained driver, driving truck 606 with trailers 1806 and 1914 got stalled in field road, empty and before reaching loading field because of broken axle Driver did not go back to flag next truck and try and reroute trucks on next road so next truck driven by #1511 George Chiquita came into same road and got stuck behind. George Chiquita after finding out what was wrong, immediately walked out to entrance of road and stopped next truck following. He told 3rd truck's driver to take next road and at the same time to have Checker report to Control about truck breakdown. Mechanics came up and managed to move Truck 606 enough to clear road and left truck to be repaired next day.

Banez was reprimanded about not trying to stop next truck from coming into same road. He was told not to let it happen again because it will involve lots of time lost. At the same time, George Chiquita was commended on his fast thinking.

/s/ T. FURUKAWA

OLAA SUGAR COMPANY, LIMITED

OLAA, T. H.

317

EMPLOYEE SERVICE RECORD

EMPLOYER'S EXHIBIT 8A, B

Social Security Number 515-26-772

1. NAME BANEZ, FAVORITO PASCUA

Last

First

Middle

JOB RECORD

OB	POSITION	RATE OF PAY	KEY	INCLUSIVE DATES		SERVICE CREDIT			KEY
				From	To	Yrs.	Mo.	Days	
	Cut cane		A	2/4/46	3/5/46	1	1		B
	CCC Car Ten.			3/5/46	11/19/46	8	14		B
	CCC Tender	.740		11/19/46	2/11/47	2	23		B
	L. Cent. Opr.	.785		2/11/47	8/1/47	5	21		B
	Exp. Att.	.865		8/1/47	9/18/47	1	18		T
	Exp. Ord.	.82		9/18/47	2/31/48				
		PGS		9/1/48	10/7/48	1	6		T
	Cane Cut.	.82		10/7/48	12/20/48	2	13		C
		.815		12/20/48	1/19/49	1			T
	Fing. lift opr.	.915		1/9/49	2/28/49	1	17		J

A—Commenced. B—Upgraded. C—Reduced. D—Discharged. E—Resigned.

G—Returned. H—Reinstated. J—Leave of Absence without pay.

K—Military Service.

JOB	POSITION	RATE OF PAY	KEY	INCLUSIVE DATES		SERVICE CREDIT			KEY
				From	To	Yrs.	Mo.	Days	
	Finger lift operator	.86		2/28/49	3/27/50			27	B
	Finger lift operator	.925		3/27/50	10/15/50	6	19		T
	Cane Cutter	.88		10/16/50	12/15/50	2	9		T
	Utility Electrician Trainee I	.80		12/16/50	6/24/51	6			B
	" " (2nd)	.835		6/25/51	8/1/51	2	6		B
	Utility Electrician Trainee (2)	.945		9/1/51	10/30/51	2	8		T
	Milled Scaleman	.945	T	10/31/51	11/25/51			26	T
	CANE CUTTER	.945	T	11/26/51	2/1/52	2	13		TC
	Exp. Train. Handyman	.945	TC	2/1/52	6/7/52				B

Key: A—Commenced. B—Upgraded. C—Reduced. D—Discharged. E—Resigned.

G—Returned. H—Reinstated. J—Leave of Absence without pay.

K—Military Service. T—Transferred

JOB	POSITION	RATE OF PAY	KEY	INCLUSIVE DATES		SERVICE CREDIT			KEY
				From	To	Yrs.	Mo.	Days	
	SENIOR CANE TRUCK DRIVER	1.17	B	8/1/52	8/3/52				B
	" "	1.28	B	9/1/52	12/1/53				D

NATIONAL LABOR RELATIONS BOARD

EMPLOYER OFFICIAL EXHIBIT NO. 8-A

DISPOSITION

IDENTIFIED
R.C.I.V.D.

MATTER OF

WITNESS BOAN'S

Key: A—Commenced. B—Upgraded. C—Reduced. D—Discharged. E—Resigned.

G—Returned. H—Reinstated. J—Leave of Absence without pay.

K—Military Service. T—Transferred

CERTIFICATE

This is to certify that the attached proceedings before the National Labor Relations Board for the Region in the matter of: Olaa Sugar Company, Ltd. and Favorito P. Banez, An Individual, Case No. 37-CA-84, ILWU Local 142 and Favorito P. Banez, An Individual, were had as therein appears, and that this is the original transcript thereof for the files of the Board.

Alderson Reporting Company,

Official Reporters,

/s/ By Carey S. Cowart,

Field Reporter.

